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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Part 1738

**RIN 0572–AC34**

### Rural Broadband Access Loans and Loan Guarantees; Correction

**AGENCY:** Rural Utilities Service, Agriculture.

**ACTION:** Final rule; correction.

**SUMMARY:** The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), is correcting a final rule that appeared in the **Federal Register** of June 9, 2016 (81 FR 37121). The document confirmed the interim rule which amends the Agency's regulation for the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program).

**DATES:** Effective September 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250–9011, Telephone: 202–690–4492, email: *Thomas.Dickson@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** RUS published a final rule in the **Federal Register** on June 9, 2016, 81 FR 37121, confirming the interim rule which amends its regulation for the Rural Broadband Access Loan and Loan Guarantee Program (Broadband Loan Program). Inadvertently, an incorrect regulatory identifier number (RIN) was referenced in the headings section of the document. Under the Congressional Review Act (CRA), this rule was not designated as a "major" rule.

In FR Doc. 2016–13302, on page 37121 in the **Federal Register** of Thursday, June 9, 2016, appearing in the first column the following correction is made to the *Headings* section, RIN Number: Remove RIN 0572–AC06 and replace it with RIN 0572–AC34.

Dated: September 7, 2016.

**Joshua Cohen,**

*Deputy Administrator, Rural Utilities Service.*

[FR Doc. 2016–21958 Filed 9–13–16; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2016–8832; Special Conditions No. 25–638–SC]**

### Special Conditions: Lufthansa Technik, AG, Boeing Model 737–700 Airplanes; Large, Non-Structural Glass in the Passenger Compartment

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Boeing Model 737–700 airplanes. This airplane, as modified by Lufthansa Technik, AG (Lufthansa), will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is large, non-structural glass panels in the passenger compartment of Very Important Person (VIP) interiors of Model 737–700 airplanes modified by Lufthansa. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on Lufthansa on September 14, 2016. We must receive your comments by October 31, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2016–8832 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/*and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Shelden, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1320.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions is impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplanes.

In addition, the substance of these special conditions has been subjected to the notice and comment period in several prior instances, and has been derived without substantive change from those previously issued. The FAA made changes for clarity in response to one recent comment on similar special conditions. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**.

## Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

## Background

On October 15, 2015, Lufthansa applied for a supplemental type certificate to install a VIP interior and cabin system, which includes installation of large, non-structural glass panels in the passenger compartment of Boeing Model 737–700 airplanes. This airplane is a twin-jet engine, transport-category airplane. The airplane seating accommodates 34 passengers, 5 cabin crewmembers, and 4 flightcrew members. Maximum takeoff weight is 171,000 lbs.

## Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Lufthansa must show that the Boeing Model 737–700 airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–700 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–700 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

## Novel or Unusual Design Features

The Boeing Model 737–700 airplane, as modified by Lufthansa, will incorporate a novel or unusual design feature associated with a VIP interior and cabin system, which is the installation of large, non-structural glass panels in the passenger compartment.

## Discussion

No specific regulations address the design and installation of large glass components in airplane passenger cabins. Existing requirements, such as §§ 25.561, 25.562, 25.601, 25.603, 25.613, 25.775, and 25.789, provide some design standards appropriate for large glass component installations. However, additional design standards for non-structural glass augmenting the existing design are needed to complement the existing requirements. The addition of glass involved in this installation, and the potentially unsafe conditions caused by damage to such components from external sources, necessitate assuring that adequate safety standards are applied to the design and installation of the feature in Boeing Model 737–700 airplanes.

For purposes of these special conditions, a large glass component is defined as a glass component weighing 4 kg (9 lbs) or more. Groupings of glass items that individually weigh less than 4 kg, but collectively weigh 4 kg or more, also would need to be included. These special conditions also apply when showing compliance with the applicable performance standards in the regulations for the installation of these components. For example, heat-release and smoke-density testing must not result in fragmentation of the component.

The use of glass has resulted in trade-offs between the one unique characteristic of glass—its capability for undistorted or controlled light transmittance, or transparency—and the negative aspects of the material, such as extreme notch-sensitivity, low fracture resistance, low modulus of elasticity, and highly variable properties. While reasonably strong, glass is nonetheless not a desirable material for traditional airplane applications because it is heavy (about the same density as aluminum), and when it fails, it breaks into extremely sharp fragments that have the potential for injury and have been known to be lethal. Likewise, the use of glass traditionally has been limited to windshields, and instrument and display transparencies. The regulations for certification of transport-category airplanes only address, and thus only recognize, the use of glass in windshield or window applications. These regulations do address the adverse properties of glass, but even so, pilots are occasionally injured from shattered glass windshields. FAA policy allows glass on instruments and display transparencies.

Other installations of large, non-structural glass items have included the following:

- Glass panels integrated onto a stairway handrail closeout.
- Glass panels mounted in doors to allow visibility through the door when desired.
- Glass doors on some galley compartments containing small amounts of service items.

These special conditions will reduce the hazards from breakage, or from these panels' potential separation from the cabin interior.

The FAA recently received comments on proposed special conditions similar to the special conditions in this document. Notice of Proposed Special Conditions no. 25–16–03–SC, for Lufthansa modifications to the Boeing Model 747–8 airplane, was published in the **Federal Register** on February 25, 2016 (81 FR 9363). The Boeing Company provided comments to that notice by letter no. B–H020–REG–16–TLM–17, dated March 24, 2016. The first comment referred to the first two conditions in Notice no. 25–16–03–SC, and recommended revising the text in special condition no. 2 to more clearly define how it is different from special condition no. 1. We agreed that those two conditions could be addressed with a single test, so we combined those two conditions into a single condition, special condition no. 1, for clarity. This document also reflects that change.

Boeing commented that the load conditions in special condition no. 4, in Notice no. 25–16–03–SC, which corresponds to special condition no. 3 in this document, should include all flight and landing loads, rather than only emergency landing. These special conditions are in addition to the load requirements in the certification basis for the glass installation, rather than in lieu of the load requirements. Thus, is it not necessary to repeat that all of these loads apply to this installation. The emergency-landing load condition is not normally applied to installations of this type, but for the use of large glass in the cabin, we determined that this additional safety standard is necessary. We made no changes to special condition number 3 in response to the Boeing comments.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

## Applicability

As discussed above, these special conditions are applicable to Boeing Model 737–700 airplanes modified by Lufthansa. Should Lufthansa apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A16WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

## Conclusion

This action affects only certain novel or unusual design features on one model series of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

## List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

## The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737–700 airplanes modified by Lufthansa.

1. *Material Fragmentation*—The applicant must use tempered or otherwise treated glass to ensure that, when fractured, the glass breaks into small pieces with relatively dull edges. The glass component installation must retain all glass fragments to minimize the danger from flying glass shards or pieces. The applicant must demonstrate this characteristic by impact and puncture testing, and testing to failure. The applicant may conduct this test with or without any glass coating that may be utilized in the design.

2. *Strength*—In addition to meeting the load requirements for all flight and landing loads, including any of the applicable emergency-landing conditions in subparts C & D of 14 CFR part 25, the glass components that are located such that they are not protected from contact with cabin occupants must not fail due to abusive loading, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact with the glass component. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

3. *Retention*—The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing, considering both the directional loading and resulting rebound conditions. The applicant must assess the effect of design details such as geometric discontinuities or surface finish, including but not limited to embossing and etching.

4. *Instruction for Continued Airworthiness*—The instructions for continued airworthiness must reflect the glass-panel fastening method used, and must ensure the reliability of the methods used (*e.g.,* life limit of adhesives, or clamp connection). Inspection methods and intervals must be defined based upon adhesion data from the manufacturer of the adhesive, or actual adhesion test data, if necessary.

Issued in Renton, Washington, on September 7, 2016.

**Michael Kaszycki,**

*Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–22048 Filed 9–13–16; 8:45 am]

**BILLING CODE 4910–13–P**

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**[Docket No. FDA–2016–N–0002]**

## New Animal Drugs for Use in Animal Feeds; Chlortetracycline and Sulfamethazine; Chlortetracycline, Procaine Penicillin, and Sulfamethazine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the withdrawal of approval of those parts of a new animal drug application (NADA) for a 3-way, fixed-ratio, combination drug Type A medicated article that pertain to use of the procaine penicillin component for production indications in swine and to reflect the reformulation of the Type A medicated article as a 2-way, fixed-ratio, combination drug product without penicillin.

**DATES:** This rule is effective September 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0817, email: *cindy.burnsteel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Pharmgate LLC (Pharmgate), 1015 Ashes Dr., Suite 102, Wilmington, NC 28405 has requested that FDA withdraw approval of those parts of NADA 138–934 for PENNCHLOR SP 500 (chlortetracycline, procaine penicillin, and sulfamethazine) Type A medicated article that pertain to use of the procaine penicillin component for the production indications of growth promotion and increased feed efficiency in swine. Pharmgate requested voluntary withdrawal of approval of these indications for use because PENNCHLOR SP 500 Type A medicated article is no longer manufactured.

With the withdrawal of approval of the production indications for procaine penicillin, the product approved under NADA 138–934 was reformulated as PENNCHLOR S 40/40 (chlortetracycline and sulfamethazine) Type A Medicated Article, a 2-way, fixed-ratio, combination drug Type A medicated article that does not contain penicillin procaine and is not labeled for production indications.

The Agency has determined under 21 CFR 25.33(a) that this action is categorically excluded from the requirement to submit an environmental assessment or an environmental impact statement because it is of a type that does not individually or cumulatively have a significant effect on the human environment.

Elsewhere in this issue of the **Federal Register**, FDA gave notice that the approval of those parts of NADA 138–934 pertaining to the procaine penicillin component indications for growth promotion and increased feed efficiency in swine is withdrawn, effective September 14, 2016. As provided for in the regulatory text of this document, the animal drug regulations are amended to reflect this partial withdrawal of approval and subsequent product reformulation.

NADA 138–934 was identified as being affected by guidance for industry (GFI) #213 "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209," December 2013.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for part 558 continues to read as follows:

**Authority:** 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

### § 558.140 [Amended]

■ 2. In § 558.140, in paragraph (b)(2), remove "No. 054771" and in its place add "Nos. 054771 and 069254".

### § 558.145 [Amended]

■ 3. In § 558.145, remove and reserve paragraph (a)(2).

Dated: September 6, 2016.

**William T. Flynn,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 2016–21985 Filed 9–13–16; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## 24 CFR Part 100

**[Docket No. FR–5248–F–02]**

**RIN 2529–AA94**

# Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act

**AGENCY:** Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends HUD's fair housing regulations to formalize standards for use in investigations and adjudications involving allegations of harassment on the basis of race, color, religion, national origin, sex, familial status, or disability. The rule specifies how HUD will evaluate complaints of quid pro quo ("this for that") harassment and hostile environment harassment under the Fair Housing Act. It will also provide for uniform treatment of Fair Housing Act claims raising allegations of quid pro quo and hostile environment harassment in judicial and administrative forums. This rule defines "quid pro quo" and "hostile environment harassment," as prohibited under the Fair Housing Act, and provides illustrations of discriminatory housing practices that constitute such harassment. In addition, this rule clarifies the operation of traditional principles of direct and vicarious liability in the Fair Housing Act context.

**DATES:** *Effective date:* October 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street SW., Room 5204, Washington DC 20410–2000; telephone number 202–402–5361 (this is not a toll-free number). Persons with hearing or speech impairments may contact this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. Purpose of the Regulatory Action*

Both HUD and the courts have long recognized that Title VIII of the Civil Rights Act of 1968, as amended, (42 U.S.C. 3601 *et seq.*) (Fair Housing Act or Act) prohibits harassment in housing and housing-related transactions because of race, color, religion, sex, national origin, disability,[1] and familial status, just as Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) (Title VII) prohibits such harassment in employment. But no standards had been formalized for assessing claims of harassment under the Fair Housing Act. Courts have often applied standards first adopted under Title VII to evaluate claims of harassment under the Fair Housing Act, but there are differences between the Fair Housing Act and Title VII, and between harassment in the workplace and harassment in or around one's home, that warrant this rulemaking.

This rule formalizes standards for evaluating claims of quid pro quo and hostile environment harassment in the housing context. The rule does so by defining "quid pro quo harassment" and "hostile environment harassment" as conduct prohibited under the Fair Housing Act, and by specifying the standards to be used to evaluate whether particular conduct creates a quid pro quo or hostile environment in violation of the Act. Such standards will apply both in administrative adjudications and in cases brought in federal and state courts under the Fair Housing Act. This rule also adds to HUD's existing Fair Housing Act regulations illustrations of discriminatory housing practices that may constitute illegal quid pro quo and hostile environment harassment.

By establishing consistent standards for evaluating claims of quid pro quo and hostile environment harassment, this rule provides guidance to providers of housing or housing-related services seeking to ensure that their properties or businesses are free of unlawful harassment. The rule also provides clarity to victims of harassment and their representatives regarding how to assess potential claims of illegal harassment under the Fair Housing Act.

In addition, this final rule clarifies when housing providers and other entities or individuals covered by the Fair Housing Act may be held directly or vicariously liable under the Act for illegal harassment, as well as for other discriminatory housing practices that violate the Act. This rule sets forth how these traditional liability standards apply in the housing context because, in HUD's experience, there has been significant misunderstanding among public and private housing providers as to the circumstances under which they will be subject to liability under the Fair Housing Act for discriminatory housing practices undertaken by others.

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[1] This rule uses the term "disability" to refer to what the Fair Housing Act and its implementing regulations refer to as "handicap." Both terms have the same legal meaning. *See Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998).

### *B. Legal Authority for the Regulation*

The legal authority for this regulation is found in the Fair Housing Act, which gives the Secretary of HUD the "authority and responsibility for administering this Act." 42 U.S.C. 3608(a). In addition, the Act provides that "[t]he Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section." 42 U.S.C. 3614a. HUD also has general rulemaking authority under the Department of Housing and Urban Development Act to make such rules and regulations as may be necessary to carry out its functions, powers and duties. See 42 U.S.C. 3535(d).

### *C. Summary of Major Provisions*

The major provisions of this rule:

- Formalize definitions of "quid pro quo harassment" and "hostile environment harassment" under the Fair Housing Act.
- Formalize standards for evaluating claims of quid pro quo and hostile environment harassment under the Fair Housing Act.
- Add illustrations of prohibited quid pro quo and hostile environment harassment to HUD's existing Fair Housing Act regulations.
- Identify traditional principles of direct and vicarious liability applicable to all discriminatory housing practices under the Fair Housing Act, including quid pro quo and hostile environment harassment.

Please refer to section III of this preamble, entitled "This Final Rule," for a discussion of the changes made to HUD's regulations by this final rule.

### *D. Costs and Benefits*

This rule formalizes clear, consistent, nationwide standards for evaluating harassment claims under the Fair Housing Act. The rule does not create any new forms of liability under the Fair Housing Act and thus adds no additional costs for housing providers and others engaged in housing transactions.

The benefits of the rule are that it will assist in ensuring compliance with the Fair Housing Act by defining quid pro quo and hostile environment harassment that violates the Act and by specifying traditional principles of direct and vicarious liability, consistent with Supreme Court precedent. Articulating clear standards enables entities subject to the Fair Housing Act's prohibitions and persons protected by its terms to understand the types of conduct that constitute actionable quid pro quo and hostile environment harassment. As a result, HUD expects this rule to facilitate more effective training to avoid discriminatory harassment in housing and decrease the need for protracted litigation to resolve disputed claims.

## II. Background

Title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act or Act), prohibits discrimination in the availability and enjoyment of housing and housing-related services, facilities, and transactions because of race, color, national origin, religion, sex, disability, and familial status. 42 U.S.C. 3601–19. The Act prohibits a wide range of discriminatory housing and housing-related practices, including, among other things, making discriminatory statements, refusing to rent or sell, denying access to services, setting different terms or conditions, refusing to make reasonable modifications or accommodations, discriminating in residential real estate-related transactions, and retaliating. *See* 42 U.S.C. 3604, 3605, 3606 and 3617.

In 1989, HUD promulgated fair housing regulations at 24 CFR part 100 that address discriminatory conduct in housing generally. The 1989 regulations include examples of discriminatory housing practices that cover quid pro quo sexual harassment and hostile environment harassment generally. Section 100.65(b)(5) identifies, as an example of unlawful conduct, denying or limiting housing-related services or facilities because a person refused to provide sexual favors. Section 100.400(c)(2) offers as an example of illegal conduct ". . . interfering with persons in their enjoyment of a dwelling because of race, color, religion, sex, handicap, familial status, or national origin of such persons, or of visitors or associates of such persons." The 1989 regulations do not, however, expressly define quid pro quo or hostile environment harassment, specify standards for examining such claims, or provide illustrations of other types of quid pro quo or hostile environment harassment prohibited by the Act. The 1989 regulations also do not discuss liability standards for prohibited harassment or other discriminatory housing practices.

Over time, forms of harassment that violate civil rights laws have coalesced into two legal doctrines—quid pro quo and hostile environment. Although HUD and the courts have recognized that the Fair Housing Act prohibits harassment because of race or color,[2] disability,[3] religion,[4] national origin,[5] familial status,[6] and sex,[7] the doctrines of quid pro quo and hostile environment harassment are not well developed under the Fair Housing Act.

As a result, when deciding harassment cases under the Fair Housing Act, courts have often looked to case law decided under Title VII, which prohibits employment discrimination because of race, color, religion, sex, and national origin.[8] But the home and the workplace are significantly different environments such that strict reliance on Title VII case law is not always appropriate. One's home is a place of privacy, security, and refuge (or should be), and harassment that occurs in or around one's home can be far more intrusive, violative and threatening than harassment in the more public environment of one's work place.[9] Consistent with this reality, the

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[2] *See, e.g., Smith* v. *Mission Assoc. Ltd. P'ship,* 225 F. Supp. 2d 1293, 1298–99 (D. Kan. 2002) (42 U.S.C. 3604(b)); *HUD* v. *Tucker,* 2002 ALJ LEXIS 33, *3–4 (HUD ALJ 2002) (42 U.S.C. 3604(a) and (b)).

[3] *See, e.g., Neudecker* v. *Boisclair Corp.,* 351 F. 3d 361, 364 (8th Cir. 2003) (42 U.S.C. 3604(f)(2)).

[4] *See, e.g., Bloch* v. *Frischholz,* 587 F. 3d 771, 787 (7th Cir. 2009) (42 U.S.C. 3604(b), 3617).

[5] *See, e.g., Effendi* v. *Amber Fields Homeowners Assoc.,* 2011 U.S. Dist. Lexis 35265, *1 (N.D. Ill. 2011) (42 U.S.C. 3604(b) and 3617); *Texas* v. *Crest Asset Mgmt.,* 85 F. Supp. 722, 736 (S.D. TX 2000) (42 U.S.C. 3604(a) and (b), 3617).

[6] *See, e.g., Bischoff* v. *Brittain,* 2014 U.S. Dist. LEXIS 145945, *13–14, *17 (E.D. Cal. 2014) (3604(b)); *United States* v. *M. Westland Co.,* 1995 U.S. Dist. LEXIS 22466, *4 (C.D. Cal. 1995) (Fair Housing Act provision not specified).

[7] *See, e.g., Quigley* v. *Winter,* 598 F. 3d 938, 946 (8th Cir. 2010) (42 U.S.C. 804(b), 3617); *Krueger* v. *Cuomo,* 115 F. 3d 487, 491 (7th Cir. 1997) (42 U.S.C. 3604(b), 3617); *Honce* v. *Vigil,* 1 F. 3d 1085, 1088 (10th Cir. 1993) (42 U.S.C. 3604(b)); *Shellhammer* v. *Lewallen,* 770 F. 2d 167 (6th Cir. 1985) (sexual harassment under the Fair Housing Act in general).

[8] *See, e.g., Honce* v. *Vigil,* 1 F. 3d at 1088; *Shellhammer* v. *Lewallen,* 770 F. 2d 167; *Glover* v. *Jones,* 522 F. Supp. 2d 496, 503 (W.D.N.Y. 2007); *Beliveau* v. *Caras,* 873 F. Supp. 1393, 1396 (C.D. Cal. 1995); *see also Neudecker* v. *Boisclair Corp.,* 351 F. 3d at 364 (applying Title VII concepts to find hostile environment based on disability violated Act). Unlike Title VII, the Act also includes disability and familial status among its protected characteristics.

[9] *See, e.g., Quigley* v. *Winter,* 598 F. 3d at 947 (emphasizing that defendant's harassing conduct

Continued

Supreme Court has recognized that individuals have heightened expectations of privacy within the home.[10]

This rule therefore formalizes standards to address harassment in and around one's home and identifies some of the differences between harassment in the home and harassment in the workplace. While Title VII and Fair Housing Act case law contain many similar concepts, this regulation describes the appropriate analytical framework for harassment claims under the Fair Housing Act.

The rule addresses only quid pro quo and hostile environment harassment, and not conduct generically referred to as harassment that, for different reasons, may violate section 818 or other provisions of the Fair Housing Act. For example, a racially hostile statement by a housing provider could indicate a discriminatory preference in violation of section 804(c) of the Act, or it could evidence intent to deny housing or discriminate in the terms or conditions of housing in violation of sections 804(a) or 804(b), even if the statement does not create a hostile environment or establish a quid pro quo. Section 818, which makes it unlawful to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of" rights protected by the Act, or on account of a person having aided others in exercising or enjoying rights protected by the Act, could be violated by conduct that creates a quid pro quo or hostile environment. It is not, however, limited to quid pro quo or hostile environment claims and could be violated by other conduct that constitutes retaliation or another form of coercion, intimidation, threats, or interference because of a protected characteristic. In sum, this rule provides standards that are uniformly applicable to claims of quid pro quo and hostile environment harassment under the Fair Housing Act, regardless of the section of the Act that is alleged to have been violated, and the same discriminatory conduct could violate more than one provision of the Act whether or not it also constitutes quid pro quo or hostile environment harassment.

## III. Changes Made at the Final Rule Stage

### *A. Overview of Changes Made at the Final Rule Stage*

In response to public comment and upon further consideration by HUD of the issues presented in this rulemaking, HUD makes the following changes at this final rule stage:

- Re-words proposed § 100.7(a)(1)(iii) to avoid confusing the substantive obligation to comply with the Fair Housing Act with the standard of liability for discriminatory third-party conduct. Proposed § 100.7(a)(1)(iii) stated that a person is directly liable for "failing to fulfill a duty to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct. The duty to take prompt action to correct and end a discriminatory housing practice by a third-party derives from an obligation to the aggrieved person created by contract or lease (including bylaws or other rules of a homeowner's association, condominium or cooperative), or by federal, state or local law." Section 100.7(a)(1)(iii) of this final rule provides that a person is directly liable for "failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct a discriminatory housing practice by a third-party depends upon the extent of control or any other legal responsibility the person may have with respect to the conduct of such third-party."
- Adds to § 100.400 a new paragraph (c)(6) specifying as an example of a discriminatory housing practice retaliation because a person reported a discriminatory housing practice, including quid pro quo or hostile environment harassment.
- Adds to § 100.600(a)(2)(i), "Totality of the circumstances," a new paragraph (C) that explains the reasonable person standard under which hostile environment harassment is assessed "Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position."
- Re-words proposed § 100.600(a)(2)(i)(B) to clarify that proof of hostile environment would not require demonstrating psychological or physical harm to avoid any confusion on that point. Proposed § 100.600(a)(2)(i)(B) stated "Evidence of psychological or physical harm is relevant in determining whether a hostile environment was created, as well as the amount of damages to which an aggrieved person may be entitled. Neither psychological nor physical harm, however, must be demonstrated to prove that a hostile environment exists." Section 100.600(a)(2)(i)(B) in this final rule provides: "Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled."
- Re-words proposed § 100.600(c) to clarify that a single incident may constitute either quid pro quo or hostile environment harassment if the incident meets the standard for either type of harassment under § 100.600(a)(1) or (a)(2). Proposed § 100.600(c) provided "A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is severe, or evidences a quid pro quo." Section 100.600(c) in this final rule provides "A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo."
- Corrects the illustration in proposed § 100.65(b)(7) to fix a typographical error in the proposed rule. In the final rule, the word "service" is corrected and made plural.

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was made "even more egregious" by the fact that it occurred in plaintiff's home, "a place where [she] was entitled to feel safe and secure and need not flee."); *Salisbury* v. *Hickman,* 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013) ("[c]ourts have recognized that harassment in one's own home is particularly egregious and is a factor that must be considered in determining the seriousness of the alleged harassment"); *Williams* v. *Poretsky Management,* 955 F. Supp. 490, 498 (D. Md. 1996) (noting sexual harassment in the home more severe than in workplace); *Beliveau* v. *Caras,* 873 F. Supp. at 1398 (describing home as place where one should be safe and not vulnerable to sexual harassment); D. Benjamin Barros, Home As a Legal Concept, 46 Santa Clara L. Rev. 255, 277–82 (2006) (discussing legal concept of home as source of security, liberty and privacy which justifies favored legal status in many circumstances); Nicole A. Forkenbrock Lindemyer, Article, Sexual Harassment on the Second Shift: The Misfit Application of Title VII Employment Standards to Title VIII Housing Cases, 18 Law & Ineq. 351, 368–80 (2000) (noting that transporting of Title VII workplace standards for sexual harassment into Fair Housing Act cases of residential sexual harassment ignores important distinctions between the two settings); Michelle Adams, Knowing Your Place: Theorizing Sexual Harassment at Home, 40 Ariz. L. Rev. 17, 21–28 (1998) (describing destabilizing effect of sexual harassment in the home).

[10] *See, e.g. Frisby* v. *Schultz,* 487 U.S. 474, 484 (1988) ("[w]e have repeatedly held that individuals are not required to welcome unwanted speech into their own homes and that the government may protect this freedom").

## IV. The Public Comments

On October 21, 2015, at 80 FR 63720, HUD published for public comment a proposed rule on Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices Under the Fair Housing Act. The public comment period closed on December 21, 2015. HUD received 63 comments. The comments were submitted by public housing agencies (PHAs) and other government agencies; private housing providers and their representatives; nonprofit organizations, including fair housing, civil rights, housing advocacy, and legal groups; tenants and other individuals. This section of the preamble addresses significant issues raised in the public comments and provides HUD's responses. All public comments can be viewed at: *http://www.regulations.gov/#!docketDetail;D=HUD-2015-0095.*

The majority of the commenters were generally supportive of the rule, with some urging HUD to publish the rule quickly. This summary does not provide responses to comments that expressed support for the proposed rule without suggesting any modifications to the rule. General supportive comments included statements of the importance of the rule in addressing and preventing sexual assault of tenants by landlords and descriptions of how the rule would empower housing providers, renters, and other consumers to understand and avoid illegal housing practices by defining and illustrating quid pro quo and hostile environment harassment. Some commenters stated that this rule may help providers focus on the importance of eliminating harassment on their properties, and some commenters identified provisions of the rule that would provide useful guidance to housing providers, tenants, residents, and others involved in housing transactions.

More specifically, commenters expressed appreciation that the rule would apply not solely to sexual harassment but to harassment because of all protected characteristics, with some commenters sharing anecdotes of harassment based on a variety of protected characteristics that they believe the rule may help remedy. Other commenters supported the proposed rule's distinction between the Fair Housing Act and Title VII, with commenters endorsing the Department's proposal not to adopt the Title VII affirmative defense to an employer's vicarious liability.

A number of commenters assessed the rule to be in accord with case law, and approved of the balance the rule strikes between the rights and obligations of the parties in a fair housing matter. Some commenters noted that the proposed standard for determining whether conduct constitutes a hostile environment is appropriately individualized to the facts of each case. Some commenters specifically identified the benefits provided by the rule in establishing a uniform framework for fairly evaluating and appropriately responding to alleged harassment, which minimizes the subjective nature of adjudicating such claims. Other commenters expressed appreciation for the proposed rule's recognition that a single incident may establish hostile environment harassment. Some commenters expressed support for the rule's acknowledgement of the fear of retaliation many individuals with disabilities experience when trying to address issues of harassment in their housing.

Many commenters stated that the rule's description of traditional principles of agency liability is accurate and not an expansion of existing liability. Some commenters expressed appreciation that the rule would incorporate traditional liability principles for any type of discriminatory housing practice, not just harassment, and would rely on negligence principles and distinguish between direct and vicarious liability. Other commenters stated that the rule would not burden housing providers because the direct liability standard is aligned with established housing provider business practice. Some commenters expressed appreciation that the rule would place landlords on notice that they should take corrective action early on, once they know or should have known of the discrimination.

Several commenters stated that housing providers are already in possession of the tools they need to create living environments free from harassment. In particular, the commenters stated that housing providers are familiar with the corrective actions they may take in order to enforce their own rules. Another commenter stated that housing providers are in the best position to select, train, oversee, and assure the correct behavior of their agents, noting that effective enforcement of the rule depends on the potential for liability on the part of housing providers.

Some commenters expressed support for the proposed rule while seeking modifications at the final rule stage. For example, a commenter encouraged broad application of the rule so that intervention and corrective action would occur before victims of housing discrimination are forced out of their homes. Another commenter sought an expansive reading of the rule in order to prevent all forms of bullying. Some commenters sought to add factors to the totality of circumstances consideration, while other commenters sought to add to the classes protected by the rule.

Following are HUD's responses to commenters' suggested modifications to the rule and the other significant issues raised in the public comments.

### *A. Quid Pro Quo and Hostile Environment Harassment: § 100.600*

a. General: § 100.600(a)

*Issue:* A commenter requested that HUD add seniors as a protected class under the rule. Other commenters stated that elderly persons often have disabilities, which make them particularly vulnerable to harassment. These commenters requested that the final rule make clear that the rule protects elderly persons from harassment because of disability.

*HUD Response:* HUD shares the commenters' concern for elderly persons but does not have the authority to add a new protected class to the Fair Housing Act and therefore is unable to adopt the commenters' recommendation to expand the scope of the rule in this way. Neither age nor senior status is a protected characteristic under the Act, although persons who are discriminated against because of their disabilities are protected under the Act without regard to their age. Therefore, elderly individuals who are subjected to quid pro quo or hostile environment harassment on the basis of disability or another protected characteristic are protected under the Act and this final rule.

*Issue:* A commenter suggested that HUD include a clause in the final rule to protect whistleblowers who experience harassment for reporting quid pro quo or hostile environment harassment. The commenter reported having witnessed such harassment and explained that whistleblowers are particularly vulnerable to quid pro quo and hostile environment harassment, but because they are not harassed on the basis of their race, color, religion, national origin, sex, familial status, or disability, they are not directly protected by the proposed regulation.

*HUD Response:* Anyone who is harassed for reporting discriminatory harassment in housing is protected by the Fair Housing Act. Section 818 of the Act makes it unlawful to coerce, intimidate, threaten, or interfere with a person on account of his or her having aided or encouraged another person in the exercise or enjoyment of any right granted or protected by sections 803–806 of the Act. To highlight the essential role whistleblower protection plays in ensuring fair housing, HUD is adding to § 100.400 a new paragraph (c)(6), which provides the following example of a discriminatory housing practice "Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority."

*Issue:* Several commenters urged HUD to state in the final rule that harassment against persons who are lesbian, gay, bisexual, or transgender (LGBT), or because of pregnancy, violates the Fair Housing Act. They asked HUD to define harassment because of sex to include harassment based on sexual orientation, gender identity, sex stereotyping, or pregnancy. The commenters referenced studies about the pervasive harassment and discrimination such persons face in housing. They also noted that a number of federal courts and federal agencies have interpreted Title VII and other laws prohibiting discrimination because of sex to include discrimination on the basis of gender identity, gender transition, or transgender status. The commenters also pointed to HUD's "Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity" rule, which provides that persons may not be denied access to HUD programs because of sexual orientation or gender identity.

*HUD Response:* The Fair Housing Act already expressly prohibits discrimination based on pregnancy as part of its prohibition of discrimination because of familial status (42 U.S.C. 3602(k)), and HUD's Equal Access Rule applies only to HUD programs.

HUD agrees with the commenters' view that the Fair Housing Act's prohibition on sex discrimination prohibits discrimination because of gender identity. In *Price Waterhouse* v. *Hopkins,* the Supreme Court interpreted Title VII's prohibition of sex discrimination to encompass discrimination based on non-conformance with sex stereotypes, stating that "[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes." [11] Taking note of *Price Waterhouse* and its progeny, in 2010, HUD issued a memorandum recognizing that sex discrimination prohibited by the Fair Housing Act includes discrimination because of gender identity. In 2012, the Equal Employment Opportunity Commission (EEOC) reached the same conclusion, "clarifying that claims of discrimination based on transgender status, also referred to as claims of discrimination based on gender identity, are cognizable under Title VII's sex discrimination prohibition." [12] Following the EEOC's decision, the Attorney General also concluded that:

> the best reading of Title VII's prohibition of sex discrimination is that it encompasses discrimination based on gender identity, including transgender status. The most straightforward reading of Title VII is that discrimination "because of . . . sex" includes discrimination because an employee's gender identification is as a member of a particular sex, or because the employee is transitioning, or has transitioned, to another sex.[13]

HUD reaffirms its view that under the Fair Housing Act, discrimination based on gender identity is sex discrimination. Accordingly, quid pro quo or hostile environment harassment in housing because of a person's gender identity is indistinguishable from harassment because of sex.[14]

HUD, in its 2010 memorandum, also advised that claims of housing discrimination because of sexual orientation can be investigated under the *Price Waterhouse* sex-stereotyping theory. Over the past two decades, an increasing number of Federal courts, building on the *Price Waterhouse* rationale, have found protections under Title VII for those asserting discrimination claims related to their sexual orientation.[15] Many Federal-sector EEOC decisions have found the same.[16] Although some Federal appellate courts have declined to find sex discrimination under Title VII based on the sole fact of the person's sexual orientation, those courts nonetheless recognized the *Price Waterhouse* sex-stereotyping theory may be used to find discrimination based on sex.[17] These Title VII legal authorities are consistent with HUD's 2010 memorandum, in which HUD interprets the Fair Housing Act's prohibition on sex discrimination to include, at a minimum, discrimination related to an individual's sexual orientation where the evidence establishes that the discrimination is based on sex stereotypes. HUD's interpretation of sex discrimination under the Fair Housing Act is also consistent with the Department of Health and Human Services' rule interpreting sex discrimination under Section 1557 the Affordable Care Act[18] and the Department of Labor's rule interpreting sex discrimination under Title VII of the Civil Rights Act of 1964.[19]

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[11] 490 U.S. 228, 251 (1989).

[12] *Macy* v. *Dept. of Justice,* No. 0120120821, 2012 EEOPUB LEXIS 1181, *13 (EEOC Apr. 20, 2012); *see also Lusardi* v. *Dept. of the Army,* No. 0120133395, 2015 EEOPUB LEXIS 896, *17 (EEOC Apr. 1, 2015).

[13] Attorney General Memorandum, Treatment of Transgender Employment Discrimination Claims Under Title VII of the Civil Rights Act of 1964 (Dec. 15, 2014), posted at *http://www.justice.gov/file/188671/download.* Similarly, the Office of Personnel Management revised its nondiscrimination regulations to make clear that sex discrimination under Title VII includes discrimination based on gender identity. *See* 5 CFR 300.102–300.103; *see also* OFCCP Directive 2014–02, Gender Identity and Sex Discrimination (Aug. 19, 2014) (stating that discrimination based on gender identity or transgender status is discrimination based on sex), posted at *http://www.dol.gov/ofccp/regs/compliance/directives/Directive_2014–02_508c.pdf.*

[14] *See Glenn* v. *Brumby,* 663 F.3d at 1317 ("discrimination against a transgender individual because of her gender nonconformity is sex discrimination, whether it is described as being on the basis of sex or gender."); *see also Finkle* v. *Howard Cnty,* 12 F. Supp. 3d 780, 788 (D. Md. 2014) (holding that "Plaintiff's claim that she was discriminated against 'because of her obvious transgender[] status is a cognizable claim of sex discrimination under Title VII"); *Rumble* v. *Fairview Health Services,* No. 14–cv–2037, 2015 U.S. Dist. LEXIS 31591, *4–5 (D. Minn. Mar. 16, 2015) (in Affordable Care Act case, holding that "[b]ecause the term 'transgender' describes people whose gender expression differs from their assigned sex at birth, discrimination based on an individual's transgender status constitutes discrimination based on gender stereotyping. Therefore, Plaintiff's transgender status is necessarily part of his 'sex' or 'gender' identity").

[15] *See, e.g., Prowel* v. *Wise Bus. Forms, Inc.,* 579 F.3d 285, 291–92 (3rd Cir. 2009) (harassment of a plaintiff because of his "effeminate traits" and behaviors could constitute sufficient evidence that he "was harassed because he did not conform to [the employer's] vision of how a man should look, speak, and act—rather than harassment based solely on his sexual orientation"); *Nichols* v. *Azteca Rest. Enter., Inc.,* 256 F.3d 864, 874–75 (9th Cir. 2001) (coworkers' and supervisors' harassment of a gay male because he did not conform to gender norms created a hostile work environment in violation of Title VII); *Hall* v. *BNSF Ry. Co.,* No. C13–2160 RSM, 2014 U.S. Dist. LEXIS 132878 *8–9 (W.D. Wash. September 22, 2014) (plaintiff's allegation that "he (as a male who married a male) was treated differently in comparison to his female coworkers who also married males" stated a sex discrimination claim under Title VII); *Terveer* v. *Billington,* 34 F. Supp. 3d 100, 116 (D.D.C. 2014) (Title VII claim based on sex stated when plaintiff's "orientation as homosexual" removed him from the employer's preconceived definition of male); *Heller* v. *Columbia Edgewater Country Club,* 195 F. Supp. 2d 1212, 1224 (D. Or. 2002) ("[A] jury could find that Cagle repeatedly harassed (and ultimately discharged) Heller because Heller did not conform to Cagle's stereotype of how a woman ought to behave. Heller is attracted to and dates other women, whereas Cagle believes that a woman should be attracted to and date only men."); *Centola* v. *Potter,* 183 F. Supp. 2d 403, 410 (D. Mass. 2002) ("Sexual orientation harassment is often, if not always, motivated by a desire to enforce heterosexually defined gender norms. In fact, stereotypes about homosexuality are directly related to our stereotype about the proper roles of men and women."). *Cf. Videckis* v. *Pepperdine Univ.,* 2015 U.S. Dist. LEXIS 167672, *16 (C.D. Cal. 2015) ("It is impossible to categorically separate 'sexual orientation discrimination' from discrimination on the basis of sex or from gender stereotypes; to do so would result in a false choice. Simply put, to allege discrimination on the basis of sexuality is to state a Title IX claim on the basis of sex or gender.").

[16] *Baldwin* v. *Dep't of Transp.,* EEOC Appeal No. 0120133080, slip op. at 9–11 (July 16, 2015); *Complainant* v. *Dep't of Homeland Sec.,* EEOC Appeal No. 0120110576, slip op. at 1 (Aug. 20, 2014) ("While Title VII's prohibition of discrimination does not explicitly include sexual orientation as a basis, Title VII prohibits sex discrimination, including sex-stereotyping discrimination and gender discrimination" and "sex discrimination claims may intersect with claims of sexual orientation discrimination."); *Couch* v. *Dep't of Energy,* EEOC Appeal No. 0120131136, slip op. at 1 (Aug. 13, 2013) (finding harassment claim based on perceived sexual orientation is a discrimination claim based on failure to conform to gender stereotypes); *Culp* v. *Dep't of Homeland Sec.,* EEOC Appeal 0720130012, slip op. at 1 (May 7, 2013) (Title VII covers discrimination based on associating with lesbian colleague); *Castello* v. *U.S. Postal Serv.,* EEOC Appeal No. 0520110649, slip op. at 1 (Dec. 20, 2011) (vacating prior decision and holding that complainant stated claim of discrimination based on sex-stereotyping through evidence of offensive comments by manager about female subordinate's relationships with women); *Veretto* v. *U.S. Postal Serv.,* EEOC Appeal No. 0120110873, slip op. at 1

*Issue:* Some commenters asked HUD to provide a definition of harassment. A commenter noted that the proposed rule defines two types of harassment—quid pro quo and hostile environment, but does not define the general term "harassment." Another commenter stated that if HUD believes that other types of harassment may also violate the Fair Housing Act, HUD should provide a definition of harassment. Other commenters strongly supported the rule's definitions of quid pro quo and hostile environment harassment, describing them as clear and inclusive, and stated that the definitions and related examples provided in the rule clarify what conduct the Fair Housing Act prohibits and will aid all stakeholders' understanding of the rule's provisions.

*HUD Response:* The term harassment has broad colloquial usage with no defined parameters. For this reason, the final rule defines the specific terms "quid pro quo" and "hostile environment harassment." Other conduct that might generically be referred to as harassment might fall in the categories of quid pro quo or hostile environment, or the conduct may constitute a different type of discriminatory housing practice in violation of section 818 of the Act or other provisions of the Act, or the conduct may not violate the Act at all. As the preamble to the proposed rule explained, a violation of section 818 may be established using the standards for quid pro quo or hostile environment harassment or by the specific elements of a section 818 violation, *i.e.,* (1) the plaintiff or complainant exercised or enjoyed—or aided or encouraged another person in the exercise or enjoyment of—a right guaranteed by sections 803–06; (2) the defendant's or respondent's conduct constituted coercion, intimidation, a threat, or interference; and (3) a causal connection existed between the exercise, enjoyment, aid or encouragement of the right and the defendant's or respondent's conduct.

*Issue:* Some commenters expressed concern that the proposed rule did not expressly state that sections 804(b) and 818 of the Fair Housing Act apply to discrimination that occurs after the complainant or plaintiff acquires the dwelling. The commenters stated that some courts have held that these provisions apply only to discrimination that affects access to housing and urged HUD to add language to the rule making clear that these particular provisions apply to post-acquisition discrimination claims.

*HUD Response:* HUD believes that the definitions of "quid pro quo" and "hostile environment harassment" make clear HUD's view that the Act covers post-acquisition conduct and therefore no additional language is required. These definitions mirror the coverage of sections 804(b), 804(f)(2), and 818 of the Fair Housing Act, which plainly apply to both pre-acquisition and post-acquisition discrimination claims. Moreover, HUD has long interpreted and enforced these provisions of the Act and others to protect against discrimination that occurs before one acquires a dwelling as well as while one is living in the dwelling. HUD's 1989 regulations interpreting sections 804(b), 804(f)(2), and 818 of the Act, for example, provide that discrimination prohibited under these provisions includes the "maintenance or repairs of sale or rental dwellings," "[d]enying or limiting the use of privileges, services, or facilities associated with a dwelling," and threatening, intimidating or interfering with persons "in their enjoyment of a dwelling." The inclusion of language covering the maintenance of housing, the continued use of privileges, services, or facilities associated with housing, and the "exercise or enjoyment" of housing indicates circumstances in which residents—as opposed to just applicants—benefit from the Act's protections throughout their residency.

Sections 100.65(b)(6)–(7) of the proposed and of the final rule further illustrate some ways in which a person may violate sections 804(b), 804(f)(2), and 818 of the Fair Housing Act: "conditioning the terms, conditions, or privileges relating to the sale or rental of a dwelling, or denying or limiting the services or facilities in connection therewith, on a person's response to harassment because of [a protected characteristic]; "subjecting a person to harassment because of [a protected characteristic] that has the effect of imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or denying or limiting services or facilities in connection with the sale or rental of a dwelling." In sum, the Act and HUD's regulations, including this final rule, make clear that the Act prohibits discrimination that occurs while a person resides in a dwelling, and courts have repeatedly interpreted the Act similarly.[20]

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(July 1, 2011) (court found that "Complainant has alleged a plausible sex-stereotyping" claim of harassment because he married a man).

[17] *See, e.g., Gilbert* v. *Country Music Ass'n,* 432 F. App'x 516, 520 (6th Cir. 2011) (acknowledging the validity of a sex-stereotyping claim "based on gender non-conforming 'behavior observed at work or affecting . . . job performance,' such as . . . 'appearance or mannerisms on the job,' " but rejecting the plaintiff's sex discrimination claim because his "allegations involve discrimination based on sexual orientation, nothing more. He does not make a single allegation that anyone discriminated against him based on his 'appearance or mannerisms' or for his 'gender non-conformity.' ") (quoting *Vickers* v. *Fairfield Med. Ctr.,* 453 F.3d 757, 763 (6th Cir. 2006); *Pagan* v. *Gonzalez,* 430 F. App'x 170, 171–72 (3d Cir. 2011) (recognizing that "discrimination based on a failure to conform to gender stereotypes is cognizable" but affirming dismissal of the plaintiff's sex discrimination claim based on "the absence of any evidence to show that the discrimination was based on Pagan's acting in a masculine manner"); *Dawson* v. *Bumble & Bumble,* 398 F.3d 211, 221, 222–23 (2d Cir. 2005) (observing that "one can fail to conform to gender stereotypes in two ways: (1) Through behavior or (2) through appearance, but dismissing the plaintiff's sex discrimination claim because she "has produced no substantial evidence from which we may plausibly infer that her alleged failure to conform her appearance to feminine stereotypes resulted in her suffering any adverse employment action"). *See also Hively* v. *Ivy Tech Community College,* 2016 U.S. App. LEXIS 13746, *16–25 (7th Cir. 2016) (reviewing this line of cases).

[18] Nondiscrimination in Health Programs and Activities, 81 FR 31376, 31388–90 (May 18, 2016) (to be codified at 45 CFR part 92).

[19] Discrimination Because of Sex, 81 FR 39108, 39137–40 (June 15, 2016) (to be codified at 41 CFR part 60–20).

[20] *See, e.g., Bloch* v. *Frischholz,* 587 F.3d at779–81 (ruling that post-sale conduct by a homeowner's association could violate section 804(b) of the Act and allowing section 3604(b) claims to address post-acquisition conduct was consistent with HUD's regulations (citing 24 CFR 100.65(b)(4))); *Comm. Concerning Cmty. Improvement* v. *City of Modesto,* 583 F.3d 690, 713 (9th Cir. 2009) (concluding that the Act covers post-acquisition discrimination); *Neudecker* v. *Boisclair Corp.,* 351 F.3d at 364 (finding plaintiff's post-acquisition harassment claim valid under the Act); *DiCenso* v. *Cisneros,* 96 F.3d 1004, 1008 (7th Cir. 1996) (recognizing claim for sexual harassment hostile housing environment under the Act); *Honce* v. *Vigil,* 1 F.3d at 1089–90 (recognizing that the Act prohibits both quid pro quo and hostile housing

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*Issue:* Some commenters asked HUD to clarify how to distinguish potentially actionable harassment under the Fair Housing Act from protected speech under the First Amendment. A commenter said that it is not clear how conduct that allegedly constitutes harassment under the rule may be distinguished from other speech or conduct that is constitutionally protected or so trivial so as not to qualify as harassment in the first place. Another commenter said that courts have consistently held that the First Amendment protects a tenant who publicly speaks about a neighbor, even if that conduct is motivated by discriminatory intent. Another commenter asked whether the proposed rule would implicate constitutional protections of free speech or free exercise of religion if the housing provider evicts a tenant where, for example, two tenants are having heated religious arguments about the other's choice of religious attire. Another commenter stated that the proposed rule properly balanced the competing rights at issue and did not interfere with constitutionally protected speech because the rule would not encompass speech that is merely offensive or that causes nothing more than hurt feelings.

*HUD Response:* As discussed elsewhere in this preamble, not every dispute between neighbors is a violation of the Fair Housing Act. Moreover, speech that is protected by the First Amendment is not within the Act's prohibitions. First Amendment protections do not extend to certain acts of coercion, intimidation, or threats of bodily harm proscribed by section 818 of the Act. As the Supreme Court has stated, "true threats" have no First Amendment protection.[21] In Notice FHEO–2015–01, HUD has set out substantive and procedural guidelines regarding the filing and investigation of Fair Housing Act complaints that may implicate the First Amendment.[22] The Notice discusses how HUD handles complaints against persons who are not otherwise covered by the Act, but who are alleged to have violated Section 818 of the Act.

*Issue:* A commenter suggested that the rule is unnecessary because other administrative and legal remedies already exist for victims of harassment under state and local law. Another commenter suggested that the rule is unnecessary because HUD has already charged cases involving harassment under the Act.

*HUD Response:* This final rule formalizes and provides uniform standards for evaluating complaints of quid pro quo and hostile environment harassment under the Fair Housing Act. While other administrative and legal causes of action may exist for victims of quid pro quo and hostile environment harassment under landlord-tenant law, tort law, or other state law, they do not substitute for the protections against discrimination and the remedies provided under the Act. Moreover, the fact that HUD has previously issued charges of discrimination involving quid pro quo or hostile environment harassment does not negate the need for this rule.

*Issue:* A commenter asked HUD to abandon the rulemaking process and instead provide specific, clear guidance to the regulated community so that housing providers can ascertain the types of behavior that do and do not constitute harassment under the Fair Housing Act. Other commenters requested that HUD provide technical assistance on various aspects of the rule to residents, housing providers, and practitioners to ensure all parties know their rights under the law.

*HUD Response:* HUD declines to abandon this rulemaking. This regulation is needed to formalize standards for assessing claims of harassment under the Fair Housing Act and to clarify when housing providers and others covered by the Act may be liable for illegal harassment or other discriminatory housing practices. It has been HUD's experience that there is significant misunderstanding among public and private housing providers about the circumstances under which they may be liable. This regulation provides greater clarity in making that assessment. HUD will continue to offer guidance and training on the Fair Housing Act generally and on this final rule, as needed.

*Issue:* A commenter recommended that the rule expand the limits for damages in cases that establish sexual harassment in housing.

*HUD Response:* HUD declines to make this change because it is unnecessary. The Act contains no limit on damages that may be awarded, specifically authorizing an award of "actual damages." 42 U.S.C. 3612(g)(3); 3613(c)(1); 3614(d)(1)(B).

*Issue:* A commenter asked HUD to consider expanding the time for filing sexual harassment complaints where a hostile environment case includes subsequent harassment that occurs many months after the initial act of sexual harassment.

*HUD Response:* HUD declines to adopt this recommendation because the Fair Housing Act specifically defines the statute of limitations for filing complaints. It is one year after an alleged discriminatory housing practice occurred or terminated for a complaint with HUD and two years after an alleged discriminatory housing practice occurred or terminated for a civil action in federal district court or state court. *See* 42 U.S.C. 3610; 3613. If a violation is continuing, the limitations period runs from the date of the last occurrence or termination of the discriminatory act.[23]

### 1. Quid Pro Quo Harassment: § 100.600(a)(1)

*Issue:* A commenter asked how the rule would "differentiate between a situation of involuntary quid pro quo that genuinely must be governed by the Act and a situation where one party is manipulating the rule following a mutually beneficial and agreed upon transaction."

*HUD Response:* The rule's definition of quid pro quo harassment requires a request or demand that is "unwelcome." A mutually beneficial and agreed upon transaction is not unwelcome and would not constitute quid pro quo harassment under the rule or the Act. It is important to note, however, that, as the rule states, if an individual

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environment sexual harassment); *Woods-Drake* v. *Lundy,* 667 F.2d 1198, 1201 (5th Cir. 1982) (finding that a landlord's discriminatory conduct against current tenants violated section 3604(b) of the Act); *Richards* v. *Bono,* No. 5:04CV484–OC–10GRJ, 2005 WL 1065141, at *3 (M.D. Fla. May 2, 2005) ("[b]ecause the plain meaning of 'rental' contemplates an ongoing relationship, the use of that term in § 3604(b) means that the statute prohibits discrimination at any time during the landlord/tenant relationship, including after the tenant takes possession of the property"); *United States* v. *Koch,* 352 F. Supp. 2d 970, 976 (D. Neb. 2004) ("[I]t is difficult to imagine a privilege that flows more naturally from the purchase or rental of a dwelling than the privilege of residing therein."); U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, Questions and Answers on Sexual Harassment under the Fair Housing Act (2008), available at *http://portal.hud.gov/hudportal/documents/huddoc?id=QAndASexualHarassment.pdf* (recognizing that current tenants may file fair housing complaints under the Act); Robert G. Schwemm, *Fair Housing Litigation After Inclusive Communities: What's New and What's Not,* 115 Colum. L. Rev. Sidebar 106, 122–23 (2015) (explaining that many post-acquisition actions, such as evictions and harassment, may give rise to violations under sections 804(a) and 804(b) of the Act).

[21] *See, e.g., R.A.V.* v. *City of St. Paul,* 505 U.S. 377, 388 (1992).

[22] Notice FHEO 2015–01 *found at: http://portal.hud.gov/hudportal/documents/huddoc?id=5-26-2015notice.pdf.*

[23] *See, e.g., Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 380–81 (1982); *Neudecker* v. *Boisclair Corp.,* 351 F.3d at 363 ; *Spann* v. *Colonial Vill., Inc.,* 899 F.2d 24, 34–35 (D.C. Cir. 1990); *Heights Cmty Congress* v. *Hilltop Realty, Inc.,* 774 F.2d 135, 139–41 (6th Cir. 1985).

acquiesces to an unwelcome request or demand, unlawful quid pro quo harassment may have occurred. Moreover, if a housing provider regularly or routinely confers housing benefits based upon the granting of sexual favors, such conduct may constitute quid pro quo harassment or hostile environment harassment against others who do not welcome such conduct, regardless of whether any objectionable conduct is directed at them and regardless of whether the individuals who received favorable treatment willingly granted the sexual favors.[24] Liability in all situations involving allegations of harassment must be determined on a case-by-case basis.

*Issue:* A commenter stated that the preamble to the proposed rule was vague in stating that "a person is aggrieved if that person is denied or delayed in receiving a housing-related opportunity or benefit because another received the benefit." The commenter was concerned that this statement would require a PHA to identify, investigate, and document a defense to any tenant-perceived delay in receiving benefits.

*HUD Response:* The quoted phrase is not vague when read in context, which explains the meaning of quid pro quo harassment under the Fair Housing Act. The phrase refers to a person who is aggrieved because he or she is denied a benefit that went to another in exchange for sexual favors, for example. Aggrieved persons under the Act and HUD's regulation are limited to those who were injured (or are about to be injured) by a discriminatory housing practice as defined in the Act. Neither the Fair Housing Act nor this final rule prohibits delays in receiving housing-related opportunities or benefits for nondiscriminatory reasons. If, however, an applicant or tenant alleges that he or she has been denied or delayed in receiving a benefit because others submitted to requests for sexual favors, the PHA should investigate to determine if quid pro quo or hostile environment harassment has occurred.

### 2. Hostile Environment Harassment: § 100.600(a)(2)

*Issue:* Several commenters recommended that HUD ensure consistency of the discussion of hostile environment harassment throughout the preamble in order to prevent any unintentional barriers for harassment victims seeking to bring claims under the Fair Housing Act. The commenters specifically stated that in one section of the preamble to the proposed rule, HUD defines "hostile environment harassment" to require unwelcome conduct because of a protected characteristic that "*unreasonably* interferes" with the use and enjoyment of a dwelling, or with the exercise of other rights protected by the Act. By contrast, the commenters stated, other sections of the preamble rightly omit the "unreasonably" qualifier when discussing hostile environment harassment. The commenters requested that the word "unreasonably" be removed from the discussion in the preamble because it is unnecessary and will create confusion. They stated that unwelcome conduct that is "sufficiently severe or pervasive" as to interfere with one's enjoyment of rights protected under the Act is in itself unreasonable.

*HUD Response:* The term "unreasonably" does not appear in the definition of "hostile environment harassment" in the regulatory text of the proposed rule. The term "unreasonably" was used in the preamble to the proposed rule to convey how a claim of hostile environment would be evaluated; that is, from the perspective of a reasonable person in the aggrieved person's position. HUD agrees that the use of the term "unreasonably" in the preamble may have caused confusion by conflating the substantive standard with the method of proof. In this final rule, as was the case in the proposed rule, the definition of "hostile environment harassment" in § 100.600(a)(2) is not phrased as requiring proof that unwelcome conduct "unreasonably" interfere with a right protected by the Fair Housing Act. But it remains that whether unwelcome conduct is sufficiently severe or pervasive as to interfere with rights protected by the Act, and therefore constitute hostile environment harassment, is evaluated from the perspective of a reasonable person in the aggrieved person's position.

*Issue:* A commenter suggested that HUD include definitions and descriptions of "bullying" in this final rule because bullying is very similar to hostile environment harassment.

*HUD Response:* HUD does not agree that it is necessary to add the word "bullying" to the final rule in order to cover conduct that could be considered bullying. Section 100.600(a)(2) of the proposed rule and of this final rule, which defines hostile environment harassment and specifies the factors to be considered when evaluating whether particular conduct creates a hostile environment in violation of the Act, is broadly worded and fully captures the concept of bullying because of a protected characteristic that the commenter seeks to include.

*Issue:* A commenter said HUD should include social isolation and neglect as forms of harassment under the rule, especially when they occur with the intent to drive a person from his or her home or interfere with his or her enjoyment of a dwelling. According to the commenter, these actions have major implications for the psychological well-being of an individual.

*HUD Response:* HUD appreciates that social isolation and neglect are serious concerns. This rule is limited to conduct engaged in because of a protected characteristic. If a tenant is subjected to unwanted severe or pervasive conduct because of a disability, for example, which leads to social isolation with the intent or effect of driving the tenant from his or her home or interfering with his or her enjoyment of a dwelling, such conduct could constitute hostile environment harassment under the standards set forth in the rule.

*Issue:* A commenter said the rule could more clearly distinguish harassment from inappropriate behavior or disputes that do not rise to the level of harassment. Other commenters stated that they appreciated the rule's emphasis on the totality of the circumstances, which will ensure that mere disagreements, mistaken remarks, or isolated words spoken in the heat of the moment will not result in liability unless the totality of the circumstances establishes hostile environment harassment.

*HUD Response:* HUD agrees that not every disagreement between persons involved in a housing transaction constitutes unlawful harassment because of a protected characteristic in violation of the Act and believes the rule appropriately captures the distinction. Section 100.600(a)(2) of the proposed rule and of this final rule defining hostile environment harassment requires that the unwelcome conduct be "sufficiently *severe or pervasive"* as to interfere with defined features of the housing transaction: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms or conditions of a residential real estate-related transaction.

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[24] *Cf.* EEOC Policy Guidance No. N–915.048, Employer Liability under Title VII for Sexual Favoritism (Jan. 12, 1990) (providing that widespread sexual favoritism based upon solicitations for and/or the granting of sexual favors or other sexual conduct "can form the basis of an implicit 'quid pro quo' harassment claim for female employees, as well as a hostile environment claim for both women and men who find this offensive").

*Issue:* A commenter recommended that the final rule recognize the role of preferential treatment for services and living arrangements, except when provided because of disability, as a type of discrimination. The commenter said that preferential treatment is a means through which to encourage and reward secondary actors for their role in creating a hostile environment, and the rule should recognize it as such. The commenter also recommended that HUD request and make available data regarding repairs or upgrades so any non-monetary favor in exchange for harassment, by an agent not directly employed by the management or owner, may be determined.

*HUD Response:* HUD declines to adopt the commenter's suggestions because the rule as currently proposed already accommodates the commenter's concerns. Providing preferential treatment that creates a hostile environment because of race, color, religion, sex, familial status, or national origin already violates the Fair Housing Act under the standards proposed in the rule. Moreover, HUD's regulations already contain illustrations as to this type of violation. Therefore, additional language regarding preferential treatment is not needed. In addition, processes for requesting and making available data regarding repairs or upgrades are outside the scope of this rule. HUD notes that in investigations, it requests data regarding repairs or upgrades as appropriate to determine whether a violation of the Fair Housing Act has occurred.

*Issue:* Two commenters asked whether the rule would apply to situations in which residential property managers or other employees of a housing provider are harassed by the housing provider's tenants. One of the commenters explained that she was a resident of the building she managed, that she had a disability, and that she had suffered harassment and threats by other residents.

*HUD Response:* The proposed standards generally would not apply to situations in which a property manager or other housing provider employee is harassed by the housing provider's tenants because such situations ordinarily do not involve a housing-related transaction covered by the Act. Where, however, a property manager is also a resident of the building that the property manager manages (*e.g.*, a resident-manager), the property manager is entitled to the same protection from discriminatory harassment under the Act and under this final rule as any other resident. Additionally, Section 818 of the Act makes it unlawful to coerce, intimidate, threaten, or interfere with any person on account of the person having assisted others in enjoying or exercising their fair housing rights. Therefore, to the extent that a property manager or other housing provider employee (whether a resident or not) is subjected to coercion, intimidation, threats, or interference because he or she aided or encouraged other people in exercising or enjoying a right protected by the Act—*e.g.*, by receiving and responding to one tenant's complaint of discriminatory harassment by another tenant—the manager or employee may be entitled to protection under the Act.[25]

### i. Totality of the Circumstances: § 100.600(a)(2)(i)

*Issue:* Some commenters requested that HUD clarify the definition of "totality of the circumstances" in § 100.600(a)(2)(i) because, in the commenters' view, the proposed rule does not sufficiently explain the showing required to prove hostile environment harassment in violation of the Fair Housing Act. Other commenters supported HUD's standard for determining whether conduct constitutes a hostile environment, stating that the standard and its factors are clear and permit an appropriately individualized assessment of the facts of each case. These commenters stated that the rule's explanation of hostile environment harassment provides meaningful guidance to both housing providers and potential claimants.

*HUD Response:* HUD believes the "totality of the circumstances" standard in this final rule provides an appropriate standard for assessing claims of hostile environment harassment, while also providing courts with the flexibility to consider the numerous and varied factual circumstances that may be relevant when assessing a specific claim. HUD therefore chooses not to alter the definition of the term "totality of the circumstances," although it will add to the final rule the standard by which the evidence is to be evaluated, which is from the perspective of a reasonable person in the aggrieved person's position. Section 100.600(a)(2) defines what constitutes hostile environment harassment under the Act. In accordance with this provision, establishing a hostile environment harassment violation requires proving that: A person was subjected to unwelcome spoken, written, or physical conduct; the conduct was because of a protected characteristic; and the conduct was, considering the totality of the circumstances, sufficiently severe or pervasive as to interfere with or deprive the victim of his or her right to use and enjoy the housing or to exercise other rights protected by the Act. Whether a hostile environment harassment violation has occurred is a fact-specific inquiry, and the rule supplies a non-exhaustive list of factors that must be considered in making that determination. It would be impossible to quantify in the rule the amount of evidence necessary to make such a showing in every case involving a claim of hostile environment harassment. The additional instruction in the rule text, and not just the preamble, that the "totality of the circumstances" is to be evaluated from the perspective of a reasonable person in the aggrieved person's position will aid all parties in assessing whether a "hostile environment" has been created.

*Issue:* HUD received several comments regarding the explanation in the preamble to the proposed rule that hostile environment harassment should be assessed from the perspective of a reasonable person in the aggrieved person's position. A commenter expressed concern that this standard is too subjective, stating that one reasonable person's measure may be different from another reasonable person's measure. Another commenter asked HUD to provide a definition of the term "reasonable person." Other commenters approved of the standard articulated in the preamble to the proposed rule and commended HUD for recognizing that the reasonable person standard must take into account the circumstances of the aggrieved person. A commenter recommended that the rule text itself explicitly state this objective standard. Another commenter, however, recommended that HUD not add the standard to the rule text itself because such addition may invite courts to second-guess the rationality and behavior of the actual victim, rather than focusing on the conduct and its surrounding circumstances.

*HUD Response:* As HUD explained in the preamble to the proposed rule, whether unwelcome conduct is sufficiently severe or pervasive to create a hostile housing environment is evaluated from the perspective of a reasonable person in the aggrieved person's position. This standard is an objective one, but ensures that an assessment of the totality of the circumstances includes consideration of whether persons of the same protected class and of like personal experience as the plaintiff or complainant would find the challenged conduct to create a hostile environment. At the proposed rule stage, HUD chose not to add the "reasonable person in the aggrieved person's position" standard to the text of the rule itself. But in light of the confusion expressed by some of the commenters, HUD has added this standard to the text of the final rule discussing the totality of the circumstances standard. In adding this reasonable person standard for assessing the evidence to the rule text, HUD does not intend to create an additional requirement for proving a hostile environment harassment claim beyond the showing required under § 100.600(a)(2) of the rule. The definition of hostile environment harassment in this final rule remains unchanged and focuses on defining the types of conduct that may establish a claim of hostile environment harassment under the Fair Housing Act.

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[25] A property manager may also be protected by Title VII, whether or not he or she resides at the housing.

### *(A) Factors To Be Considered: § 100.600(a)(2)(i)(A)*

*Issue:* Several commenters commended HUD's explanation in the preamble to the proposed rule that individuals have heightened rights within their home for privacy and freedom from unwelcome speech and conduct. Many commenters agreed with HUD that harassment in or around one's home can be far more intrusive, violative, and threatening than harassment in the more public environment of one's workplace. Some commenters said these considerations should be explicitly incorporated into the text of the rule itself. Commenters specifically requested that HUD revise proposed § 100.600(a)(2)(i)(A) by adding as a factor to be considered in determining whether hostile environment harassment exists "the heightened rights in or around one's home for privacy and freedom from harassment" or "the heightened reasonable expectation of privacy and freedom from harassment in one's home." Another commenter said that § 100.600(a)(2)(i)(A) should expressly state that conduct occurring in one's home may result in a violation of the Fair Housing Act even though the same conduct in one's place of employment may not violate Title VII.

*HUD Response:* HUD declines to add language regarding individuals' heightened rights within the home for privacy and freedom from unwelcome speech and conduct to the rule text in § 100.600(a)(2)(i)(A). The non-exhaustive list of factors included in § 100.600(a)(2)(i)(A) identifies circumstances that can be demonstrated with evidence during the adjudication of a claim of hostile environment harassment under the Act. Evidence regarding the "location of the conduct," as explicitly identified in § 100.600(a)(2)(i)(A), is a critical factor for consideration and will allow courts to take into account the heightened privacy and other rights that exist within the home when determining whether hostile environment harassment occurred. For similar reasons, HUD also declines to add language stating that harassing conduct may result in a violation of the Fair Housing Act even though such conduct might not violate Title VII. HUD believes that by establishing a hostile environment harassment standard tailored to the specific rights protected by the Fair Housing Act and by directing that hostile environment claims under the Act are to be evaluated by assessing the totality of the circumstances—including the location of the unwelcome conduct and the context in which it occurred—the final rule ensures that courts consider factors unique to the housing context when making the fact-specific determination of whether the particular conduct at issue violates the Act. Therefore, while HUD agrees that unwelcome conduct in or around the home can be particularly intrusive and threatening and may violate the Fair Housing Act even though the same or similar conduct in an employment setting may not violate Title VII, HUD does not believe the proposed additions to § 100.600(a)(2)(i)(A) are necessary.

*Issue:* A commenter supported HUD's identification of the relationship of the persons involved as a factor to be considered when determining whether hostile environment harassment has occurred, but recommended that the final rule further refine the concept. Specifically, in the homeowner's association context, the commenter drew distinctions between the relationships among the different resident-owners and between a board member and a resident-owner. The commenter also distinguished these relationships from landlord-tenant relationships.

*HUD Response:* HUD appreciates these distinctions and believes the rule already accommodates them by requiring the relationship of the parties involved be taken into account in determining whether a hostile environment has been created. This is one of several factors that HUD identified for evaluating allegations of hostile environment harassment. In a community governed by a homeowner's association, for example, the influence an owner-board member has over another resident by virtue of his or her authority to make association policy, to approve homeowner requests, and to bring or adjudicate charges of association rule violations may be greater than a non-board member, and thus each person's relationship to the victim should be considered when assessing whether a hostile environment exists. No further refinement to the rule is necessary to address the commenter's concerns; nor is any further refinement desirable, as it would risk inadvertently inserting limiting factors into the otherwise broad and flexible totality of the circumstances test.

### *(B) Physiological or Physical Harm: § 100.600(a)(2)(i)(B)*

*Issue:* A commenter stated that § 100.600(a)(2)(i)(B) of the proposed rule, which concerns psychological or physical harm, is confusing. The commenter requested that HUD clarify the meaning of this provision.

*HUD Response:* HUD agrees that § 100.600(a)(2)(i)(B) may be confusing and has revised this provision at the final rule stage; the revision is intended to clarify without altering the meaning of the provision. Proposed § 100.600(a)(2)(i)(B) provided that "Evidence of psychological or physical harm is relevant in determining whether a hostile environment was created, as well as the amount of damages to which an aggrieved person may be entitled. Neither psychological nor physical harm, however, must be demonstrated to prove that a hostile environment exists." Final § 100.600(a)(2)(i)(B) provides that "Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment was created and, if so, the amount of damages to which an aggrieved person may be entitled." As explained at the proposed rule stage, evidence of such harm is but one of many factors that may be considered in assessing the totality of the circumstances. So long as the unwelcome conduct is sufficiently severe or pervasive as to interfere with or deprive the victim of a right protected by the Act, there is no need to also demonstrate psychological or physical injury in order to prove a hostile environment violation.

### ii. Title VII Affirmative Defense: § 100.600(a)(2)(ii)

*Issue:* HUD received several comments on § 100.600(a)(2)(ii) of the proposed rule, which provides that the

Title VII affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor does not apply to claims brought pursuant to the Fair Housing Act. Several commenters commended HUD's decision not to extend the Title VII affirmative defense to the Fair Housing Act and agreed with HUD that such a defense would be inappropriate in the housing context, in part because of the lack of an exhaustion requirement under the Fair Housing Act, as well as the differences between an agent in the employment context versus an agent in the housing context.

Other commenters recommended that HUD apply the judicially-created Title VII affirmative defense to Fair Housing Act claims. One such commenter stated that HUD, by rule, cannot import a Title VII cause of action onto the Fair Housing Act without the judicially-created limitations on a Title VII employer's liability under that cause of action. Another commenter believed that HUD eliminated an existing affirmative defense for housing providers that is available in the employment context. Given the scope of potential harassment claims, this commenter found unwarranted HUD's position that the Title VII affirmative defense is not relevant to harassment in the housing context because, in HUD's view, a housing agent who harasses residents is inevitably aided by his or her agency relationship with the housing provider. In the commenter's view, a responsible housing provider who exercises reasonable care to prevent harassment, and who provides a complaint mechanism that a resident unreasonably fails to invoke, should be afforded the same affirmative defense available to employers in analogous situations. Another commenter asked HUD to reconsider its decision to reject the affirmative defense as it appears unfair and based on an assertion that agents of housing providers are equivalent to a supervisory employer in terms of their power over applicants and/or tenants.

*HUD Response:* After carefully considering the analysis provided by the commenters on both sides of the issue, HUD has retained its view that the Title VII affirmative defense is not appropriate to include as a defense under the Fair Housing Act. HUD has never found occasion to employ such a defense and remains unaware of any court having extended the Title VII affirmative defense to fair housing claims, and commenters did not identify any such case law. Moreover, unlike Title VII, which requires employees to exhaust their administrative remedies before filing an action in court, the Fair Housing Act has no exhaustion requirement, and nothing in the text of the Fair Housing Act otherwise indicates that Congress intended to permit a housing provider to avoid vicarious liability for discriminatory harassment perpetrated by its agents by establishing its own complaint process or procedure. To the contrary, the Act authorizes any aggrieved person to directly commence a civil action in federal or state court, whether or not the individual has previously chosen to file an administrative complaint with HUD.[26] Therefore, as explained in the preamble to the proposed rule, the Title VII affirmative defense is not appropriately applied to harassment in the housing context because its adoption would impose burdens on victims of discriminatory harassment that are incompatible with the broad protections and streamlined enforcement mechanisms afforded by the Fair Housing Act.

HUD notes that some comments on this issue demonstrated a misunderstanding of the potential scope of the Title VII affirmative defense. The Title VII affirmative defense does not apply to harassment claims based on direct liability. Thus, contrary to the perceptions of some commenters, the affirmative defense does not apply to cases in which an employer—or housing provider—knew or should have known of an agent or third-party's harassment and failed to stop it, because such cases involve direct rather than vicarious liability.

Therefore, in exercising its power to promulgate rules to interpret and carry out the Act, HUD believes it would be inappropriate to add, for the first time, an affirmative defense that would require victims of hostile environment harassment—who are often housing insecure or otherwise especially vulnerable—to choose between the risk of retaliation by the perpetrator and the risk of losing their right to hold a housing provider liable for the acts of its agents. Instead, the traditional principles of vicarious liability—including those standards that hold a principal liable for an agent's conduct that is taken within the scope of employment, with the apparent authority of the principal, or that is otherwise aided by the agency relationship—will continue to govern a housing provider's liability for harassment. While HUD declines to extend the Title VII affirmative defense to the Fair Housing Act, the development and dissemination of anti-harassment policies will still assist housing providers to avoid litigation by identifying and quickly addressing improper conduct by employees or other agents.

*Issue:* A commenter requested that HUD create safe harbors from liability for housing providers for harassment by their agents and third-parties. Specifically, the commenter stated that liability for unknown and unintended harassment by an agent or third-party should not be imposed on a housing provider where the housing provider: (1) Provides periodic mandatory fair housing training for its employees and agents (including training related to harassment claims); (2) requires unaffiliated management companies to conduct similar training of their employees, report to the property owner on a regular basis about the steps it is taking to avoid fair housing claims generally, and promptly report any potential fair housing claim to a designated official of the housing provider; and (3) implements and publicizes a hotline or other secure communication mechanism whereby a tenant can confidentially notify the housing provider about possible harassment by employees or other tenants.

Another commenter expressed concern that the rule as proposed would expand a PHA's exposure to liability by making the PHA liable for perceived hostile environment harassment that occurs beyond its knowledge or control and fails to create or incentivize any new remedies to protect tenants against hostile environment harassment. As a result, according to the commenter, the proposed rule raises the possibility that future litigation over alleged harassment might be driven by plaintiff attorneys' fees rather than the merit of the allegations or effective remedies. In light of these concerns, the commenter suggested that HUD revise the proposed rule to adopt defenses similar to those applicable to public agencies under California state law for injuries caused by dangerous conditions on the public agency's property. As described by the commenter, the State law defense provides that liability attaches to the public agency if the plaintiff establishes that: (1) The public employee's negligence or wrongful act or omission created the dangerous condition; or (2) the public entity had actual or constructive notice of the dangerous condition before the injury occurred. The commenter believes this standard incentivizes the public agency to maintain its property and train its staff in order to limit its exposure to liability and reduce the risk of injuries.

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[26] *See* 42 U.S.C. 3614(a).

*HUD Response:* As explained in the preamble to the proposed rule, traditional principles of tort liability and agency law apply in fair housing cases. The standards for direct and vicarious liability established in this final rule continue to reflect such principles and do not impose any new legal obligations or create or define new agency relationships or duties of care. For the same reasons that HUD does not interpret the Fair Housing Act to import the Title VII affirmative defense for a claim of hostile environment harassment by the provider's agent, HUD does not believe the requested safe harbor or state law-derived defense from liability is appropriate.

The California State law identified by the commenter essentially imposes a negligence standard for public agency liability, which is akin to the standard of direct liability that governs Fair Housing Act claims under § 100.7(a)(1)(ii). In addition, under traditional principles of agency law, a housing provider may be held vicariously liable for the discriminatory acts of an employee or agent regardless of whether the housing provider knew of or intended the discriminatory conduct where the employee was acting within scope of his or her agency, or where the harassment was aided by the agency relationship. HUD believes that traditional tort and agency law standards for assessing liability under the Act will encourage housing providers to provide appropriate training for their staff and to ensure compliance with the Act.

*Issue:* A commenter asserted that the proposed rule, including HUD's decision not to adopt the Title VII affirmative defense, raises Federalism implications. The commenter stated that the proposed rule creates a cause of action based on Title VII law that could, ostensibly, be brought against a State, even when the actions are performed by a city or other sub-recipient of funds, and obviate the State's sovereign immunity despite its ongoing assertion that it has not waived such sovereign immunity. The commenter said that the rule would do so while removing the judicially-created Title VII affirmative defense. The commenter recommended that HUD withdraw the rule or create a specific carve-out for actions against a State that limits and defines the extent of vicarious liability, including a safe-haven for conduct or policy akin to an affirmative defense.

*HUD Response:* Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial, direct compliance costs on state and local governments and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. Under the Executive Order, Federalism implications are those having substantial direct effects on states or local governments (individually or collectively), on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have such implications. As discussed elsewhere, the rule creates no new cause of action, liability or obligation on the part of any housing provider, including a State. The rule interprets the Fair Housing Act's prohibition on discriminatory harassment, and in doing so, neither alters the substantive prohibitions against discrimination in the Act nor creates enhanced liability or compliance costs for States or any other entities or individuals. Similarly, the rule does not alter any sovereign immunity protections that a State may have under the Eleventh Amendment. In addition, the rule does not remove a pre-existing affirmative defense, because no court of which HUD is aware has ever applied the Title VII affirmative defense or any other affirmative defense or safe harbor to Fair Housing Act claims; nor has HUD ever applied such a standard. HUD notes further that creating an affirmative defense or safe harbor for States would not be consistent with Congressional intent, for the reasons discussed above.

b. Type of Conduct: § 100.600(b)

*Issue:* A commenter inquired whether a verbal or written account from an aggrieved tenant would be enough to comprise a showing of hostile environment harassment under the Act.

*HUD Response:* A verbal or written account from an aggrieved tenant may be enough to provide notice to a housing provider that a hostile environment may be occurring, but whether it would be sufficient to establish that the conduct is sufficiently severe or pervasive to create a hostile environment depends on the totality of the circumstances.

c. Number of Incidents: § 100.600(c)

*Issue:* A commenter expressed concern that the proposed rule includes both a "totality of the circumstances standard" and a "single incident standard" and asked HUD to provide more descriptive language to determine the existence of a hostile environment based on such standards. The commenter asked HUD to clarify or provide examples of when a single incident of harassment would be sufficient to create a hostile environment. Several other commenters expressed approval of § 100.600(c) of the proposed rule, which provides that a single incident of harassment because of race, color, religion, sex, familial status, national origin, or disability may constitute a discriminatory housing practice, where the incident is severe, or evidences a quid pro quo. Other commenters stated that in some cases a single act can be so severe as to deprive individuals of their right to use and enjoy their housing.

*HUD Response:* HUD did not intend to propose two different standards for determining whether hostile environment harassment has occurred. To avoid confusion and better clarify the relationship between § 100.600(c) and § 100.600(a)(2), HUD is revising § 100.600(c) at this final rule stage. Section 100.600(a)(2) of the rule provides the only standard that must be met to prove a claim of hostile environment harassment under the Act—namely, that: A person was subjected to unwelcome spoken, written, or physical conduct; the conduct was because of a protected characteristic; and the conduct was sufficiently severe or pervasive as to interfere with or deprive the victim of his or her right to use and enjoy the housing or to exercise other rights protected by the Act. As provided in § 100.600(a)(2)(i), a determination of whether this standard has been met is to be based on the totality of the circumstances. Section 100.600(c) is included in the rule to make clear that a single incident of harassment because of a protected characteristic, if sufficiently severe, can constitute a hostile environment harassment violation (as defined in § 100.600(a)(2)). Whether a claim of hostile environment harassment is based on a single incident or repeated incidents of unwelcome conduct, an assessment of the totality of the circumstances is still required. For example, the nature of the unwelcome conduct (*e.g.,* whether it was spoken, written and/or physical) and the location of the conduct (*e.g.,* whether it occurred inside the victim's apartment or in a common space), among other potential considerations, would factor into an assessment of whether a single incident of harassment was sufficiently severe to interfere with or deprive the victim of his or her right to use and enjoy the housing or to exercise other rights protected by the Act.

HUD is revising proposed § 100.600(c) at this final rule stage as follows.

Proposed § 100.600(c) provided that: "A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is severe, or evidences a quid pro quo." Final § 100.600(c) now provides: "A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo."

### *B. Illustrations: §§ 100.60, 100.65, 100.80, 100.90, 100.120, 100.130, and 100.135*

*Issue:* Several commenters supported the illustrations included throughout the proposed rule and asked HUD to provide additional examples of prohibited practices in the final rule. They requested more examples of: Unwelcome conduct; how quid pro quo harassment occurs with respect to protected classes other than sex; single incidents that constitute a hostile environment; and when direct liability exists. Commenters also recommended that HUD add to the final rule examples clarifying the relationship between age and disability and add examples of harassment of pregnant women, Muslims, persons with limited English proficiency, persons with mental health-related disabilities or HIV/AIDS, and persons who assert their rights to organize. Another commenter stated that HUD has provided useful illustrations of what does not violate the Act in other fair housing contexts, and requested that HUD do the same here, citing 24 CFR 100.205(b) (concerning the impracticality of meeting the Act's design and construction standards).

*HUD Response:* HUD retains the illustrations contained in the proposed rule, but otherwise declines to add more illustrations to the final rule. The rule contains numerous illustrations of possible quid pro quo and hostile environment harassment referencing all protected classes. But whether illegal harassment has or has not occurred in a particular situation is fact-specific and must be determined on a case-by-case basis. For this reason, the illustrations provided are simply more specific descriptions of the legal standard, *e.g.*, conditioning the availability of housing on a person's response to sexual harassment illustrates an unlawful refusal to sell or rent. Providing illustrations as to what does not violate the Act would not be appropriate because of the necessarily fact-specific nature of such an inquiry. HUD notes that § 100.205(b), which the commenter cited, does not describe conduct that does not violate the Act, but rather provides examples of when the impracticality exception to the Act's design and construction requirements is applicable. Lastly, some of the suggested examples are outside the scope of the Act, *e.g.*, the right to organize, but HUD notes that persons would be protected by the Act to the extent the harassment is because of their race, color, religion, sex, familial status, national origin, or disability.

### *C. Liability for Discriminatory Housing Practices: § 100.7*

#### a. Direct Liability for One's Own Discriminatory Conduct: § 100.7(a)(1)(i)

*Issue:* A commenter stated that the language in § 100.7(a)(1)(i), which states that a person is directly liable for the person's own conduct that results in a discriminatory housing practice, may lead to the liability of innocent actors and third-parties who somehow contributed to an illegal discriminatory action. The commenter gave as an example a situation in which a person supplied the pen that a housing provider used to make notes on an application that the housing provider later rejected because of a protected characteristic of the applicant.

*HUD Response:* The rule creates no new or enhanced forms of liability. As discussed in the preamble of the proposed rule, § 100.7(a)(1)(i) does nothing more than restate the most basic form of direct liability, *i.e.*, that a person is directly liable for his or her own discriminatory housing practices, as defined by the Act. Whether a person's conduct constitutes a discriminatory housing practice under sections 804–806 or 818 of the Act depends upon the specific facts.

#### b. Direct Liability for Negligent Failure To Correct and End Discrimination: § 100.7(a)(1)(ii) and (iii)

*Issue:* Several commenters expressed concern about the "should have known" standard in proposed § 100.7(a)(1)(ii) and (iii), which states that a person is directly liable for "(ii) [f]ailing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person *knew or should have known* of the discriminatory conduct," and "(iii) [f]ailing to fulfill a duty to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person *knew or should have known* of the discriminatory conduct . . ." (emphasis added).

Some commenters stated that this standard creates almost certain liability for landlords and that requiring actual knowledge would be more fair to property owners because liability would only attach for failing to act on known discrimination. A commenter stated that the final rule should limit liability where a housing provider has limited knowledge of misconduct. In contrast, other commenters stated that the "knew or should have known" standard is reasonable and consistent with the Fair Housing Act, legal negligence principles, and business practices of housing providers. One commenter complained that the proposed rule appears to require actual knowledge, even though the standard only requires that a defendant "should have known" of the harassment.

Commenters asked HUD to clarify how a housing provider "should have known" about harassment, especially in the context of tenant-on-tenant harassment. A commenter questioned what the housing provider needs to know before liability attaches and whether the housing provider needs to know that the harasser's actions violate the Fair Housing Act or only that the harasser took some action toward the victim. Several commenters expressed concern that a PHA might be liable when a housing voucher holder is harassed but neither the apartment owner nor voucher holder informs the housing agency about the harassment. One commenter expressed a similar concern that owners living in another city or state may not learn that harassment is taking place on their property unless the tenant tells the owner, and another commenter asked about a PHA's potential liability when harassment occurs over the internet but is unknown to the housing agency.

*HUD Response:* The "knew or should have known" standard is well established in civil rights and tort law.[27] A housing provider "should have known" of the harassment of one resident by another when the housing provider had knowledge from which a reasonable person would conclude that the harassment was occurring. Such knowledge can come from, for example, the harassed resident, another resident, or a friend of the harassed resident.[28] There is no requirement that the resident contact the housing provider about the harassment, only that the housing provider have knowledge from which a reasonable person would conclude that harassment was occurring. If the housing provider has no information from which a reasonable person would conclude that one resident or a third-party was harassing another resident, the housing provider is not liable for failing to take action to correct and end the harassment. If the knowledge component is not met, a housing provider cannot be held liable for a resident's or third-party's discriminatory conduct. HUD disagrees that this standard will subject landlords to certain liability. Application of this standard to the liability provisions of the rule helps clarify the Act's coverage for residents and housing providers. It is intended to help guide housing providers in their assessment of when to intervene to prevent or end discriminatory conduct. HUD encourages housing providers to create safe, welcoming, and responsive housing environments by regularly training staff, developing and publicizing anti-discrimination policies, and acting quickly to resolve complaints once sufficient information exists that would lead a reasonable person to conclude that harassment was occurring.

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[27] As the Supreme Court has recognized, fair housing actions are essentially tort actions. *See Meyer* v. *Holley*, 537 U.S. 280, 285 (2003) (citing *Curtis* v. *Loether*, 415 U.S. 189, 195–96 (1974)); *see also Burlington Indus.* v. *Ellerth*, 524 U.S. 742, 759 ("An employer is negligent with respect to sexual harassment if it *knew or should have known* about the conduct and failed to stop it. Negligence sets a minimum standard for employer liability under Title VII. . . .") (emphasis added).

*Issue:* A commenter was concerned that § 100.7(a)(1)(ii) is seeking to hold the agent liable for the actions of its principal, contrary to Supreme Court precedent, and asked why this provision is necessary in light of proposed § 100.7(b) (vicarious liability), which states that the housing provider is already liable for the unlawful actions of the agent, whether known or not.

*HUD Response:* Section 100.7(a)(1)(ii) addresses a principal's direct liability for the principal's own negligent conduct in overseeing (or failing to oversee) its agent or employee. Under the negligence theory of direct liability, the principal is liable only if the principal knew or should have known of the agent's discriminatory conduct and failed to take corrective action to end it. Section 100.7(b), by contrast, holds the principal vicariously liable for the discriminatory conduct of its agent, regardless of whether the principal knew or should have known of the agent's conduct. As the commenter noted, an agent is not vicariously liable for the principal's conduct, but is directly liable for his or her own actions. Section 100.7 does not create liability that does not already exist; it does not hold the agent liable for the conduct of the principal, and it is entirely consistent with traditional agency principles and Supreme Court precedent.

*Issue:* A commenter asked for clarification of the term "third-party" in § 100.7(a)(1)(iii). The commenter was concerned that if left undefined, the term would include everyone. The commenter asked HUD to limit the term to what the commenter perceived to be HUD's primary concern—"liability resulting from a landlord's failure to assist a tenant subject to another tenant's harassment."

*HUD Response:* HUD does not agree that its use of the term "third-party" requires further clarification in the text of the rule. In the context of the rule, liability for discriminatory conduct by a "third-party" is appropriately limited to a non-employee or non-agent who engaged in quid pro quo or hostile environment harassment of which the housing provider knew or should have known and had the power to correct.

*Issue:* A commenter stated that it is unclear from the proposed rule whether the obligation in proposed § 100.7(a)(1)(iii) to take action to end a discriminatory housing practice by a third-party *must* be derived from a contract, lease, or law, or whether it *could* be derived from these sources. The commenter also requested that HUD clarify in the rule whether generic lease provisions related to the use and enjoyment of one's home that are found in almost every lease would be enough to create the obligation and related liability contemplated in § 100.7(a)(1)(iii). Another commenter expressed a concern that housing providers would take steps to minimize their liability for failing to take corrective action by revising their leases and other documents so that they do not create a duty to protect tenants. A commenter expressed concern that the term "duty," incorporated from other laws and contracts, is difficult to fully assess and therefore bound to create unanticipated consequences.

*HUD Response:* HUD recognizes that proposed § 100.7(a)(1)(iii) may have caused some confusion, so HUD has reworded the provision in the final rule. Proposed § 100.7(a)(1)(iii) stated that a person is directly liable for "failing to fulfill a duty to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct. The duty to take prompt action to correct and end a discriminatory housing practice by a third-party derives from an obligation to the aggrieved person created by contract or lease (including bylaws or other rules of a homeowner's association, condominium or cooperative), or by federal, state or local law." Revised section 100.7(a)(1)(iii) of this final rule provides that a person is directly liable for "failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct a discriminatory housing practice by a third-party depends upon the extent of control or any other legal responsibility the person may have with respect to the conduct of such third-party." The final rule does not use the term "duty," and no longer identifies specific categories of potential sources for such a duty. A housing provider's obligation to take prompt action to correct and end a discriminatory housing practice by a third-party derives from the Fair Housing Act itself, and its liability for not correcting the discriminatory conduct of which it knew or should have known depends upon the extent of the housing provider's control or any other legal responsibility the provider may have with respect to the conduct of such third-party.[29] For example, when a housing provider enters into a lease agreement with a tenant, the lease typically obligates the housing provider to exercise reasonable care to protect the residents' safety and curtail unlawful conduct in areas under the housing provider's control, whether or not the lease contains specific language creating that responsibility. Even if the lease does not expressly create such obligations, the power to act may derive from other legal responsibilities or the operation of law.[30]

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[28] *See, e.g., Neudecker* v. *Boisclair Corp.,* 351 F.3d at 364 (owner may be liable for acts of tenants and management's children after failing to respond to plaintiff's complaints of harassment); *Bradley* v. *Carydale Enterprises,* 707 F. Supp. 217 (E.D. Va. 1989) (finding that owners and managers' failure to address one tenant's complaints of racial harassment by another tenant stated a claim under 42 U.S.C. 1981 and 1982).

[29] *See, e.g., Neudecker* v. *Boisclair Corp.,* 351 F. 3d at 364 (owner may be liable for acts of tenants and management's children after failing to respond to plaintiff's complaints of harassment); *Fahnbulleh* v. *GFZ Realty, LLC,* 795 F. Supp. 2d 360, 364–65 (D. Md. 2011) (denying landlord's motion to dismiss because the Act imposes no categorical rule against landlord liability for tenant-on-tenant harassment); *Reeves* v. *Carrollsburg Condo. Unit Owners Ass'n,* 1997 U.S. Dist. LEXIS 21762, *26 (D.D.C. 1997) (condo association that knew of harassment by resident but failed to take corrective actions may violate Act).

[30] *See, e.g., Wilstein* v. *San Tropai Condo. Master Ass'n,* 1999 U.S. Dist. LEXIS 7031, *28–33 (N.D. Ill. Apr. 21, 1999) (rejecting condo association's

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*Issue:* A commenter expressed concern that proposed § 100.7(a)(1)(iii) creates liability on the part of a community association (homeowner association, condominium or cooperative) for the illegal acts of residents over whom they have no control. The commenter urged HUD to remove or revise the proposed rule's extension of direct liability to community associations for the discriminatory actions of non-agents. The commenter stated that community associations generally lack legal authority to mandate that residents take actions described in the preamble of the proposed rule because the associations cannot evict homeowners or otherwise impose conditions not specifically authorized by the association's covenants, conditions, and restrictions (CC&Rs) or state law. The commenter suggested that if the language in § 100.7(a)(1)(iii) remains, it should be modified to clearly state which terms and conditions in association bylaws and regulations constitute a duty on the part of an association or its agents to investigate and punish residents for illegal discriminatory housing practices.

*HUD Response:* As noted above, HUD has slightly revised § 100.7(a)(1)(iii) to clarify that a housing provider is liable under the Fair Housing Act for third-party conduct if the provider knew or should have known of the discriminatory conduct, has the power to correct it, and failed to do so. HUD also notes that the rule does not add any new forms of liability under the Act or create obligations that do not otherwise exist. The rule does not impose vicarious liability (*see* § 100.7(b)) on a community association for the actions of persons who are not its agents. Section 100.7(a)(1)(ii) describes a community association's liability for its own negligent supervision of its agents, and § 100.7(a)(1)(iii) describes a community association's liability for its own negligence for failing to take prompt action to correct and end a discriminatory housing practice by a third-party. With respect to § 100.7(a)(1)(iii), the rule requires that when a community association has the power to act to correct a discriminatory housing practice by a third party of which it knows or should have known, the community association must do so.

As the commenter recognizes, a community association generally has the power to respond to third-party harassment by imposing conditions authorized by the association's CC&Rs or by other legal authority.[31] Community associations regularly require residents to comply with CC&Rs and community rules through such mechanisms as notices of violations, threats of fines, and fines. HUD understands that community associations may not always have the ability to deny a unit owner access to his or her dwelling; the rule merely requires the community association to take whatever actions it legally can take to end the harassing conduct.

*Issue:* A few commenters suggested that HUD should reconsider imposing liability on a landlord for tenant-on-tenant harassment because the law in this area is not well-settled. The commenters expressed concern that proposed § 100.7(a)(1)(iii) exceeds the scope of the Act by expanding liability for housing providers to include liability for third-party harassment of a resident when the housing provider did not act with discriminatory intent. One commenter, relying on Title VII case law and an interpretation of the phrase "because of," stated that a landlord must have acted with discriminatory intent in order to be liable under the Fair Housing Act. Another commenter stated that although section 804(a) of the Fair Housing Act does not require a showing of intentional discrimination, claims brought under sections 804(b) and 817 of the Act do, citing *Francis* v. *King Park Manor, Inc.,* 91 F. Supp. 3d 420 (E.D.N.Y. 2015). Another comment stated that to establish a housing provider's liability for failing to take action to correct third-party harassment, the plaintiff must show not just that the housing provider failed to correct the harassment but also that the housing provider did so because of animus against the victim due to a protected characteristic. A commenter pointed to *Lawrence* v. *Courtyards of Deerwood Ass'n, Inc.,* 318 F. Supp. 2d 1133 (S.D. Fla. 2004), as an example of a case in which the court dismissed the fair housing claim against the housing provider because the plaintiffs failed to establish that the housing provider's ineffective response to the harassment was due to racial animus. Commenters also pointed to *Ohio Civil Rights Comm'n* v. *Akron Metro. Hous. Auth.,* 892 NE.2d 415, 420 (Ohio 2008), in which the court declined to impose liability on landlords for failing to take corrective action in response to discriminatory harassment committed by the landlord's tenants. A commenter also suggested that not requiring discriminatory animus on the part of the housing provider would amount to strict liability. The commenters proposed that in light of these contrary federal and state court decisions, HUD should require proof of some degree of animus by the housing provider before subjecting the provider to direct liability for the acts of third parties.

*HUD Response:* HUD does not agree that a housing provider's failure to act to correct third-party harassment must be motivated by a discriminatory intent or animus before the provider can be held liable for a Fair Housing Act violation. In reaching this conclusion, HUD considered its own experience in administering and enforcing the Fair Housing Act, the broad remedial purposes of the Act,[32] relevant case law including the Supreme Court's recent ruling in *Texas Department of Community Affairs* v. *Inclusive Communities Project, Inc.* holding that the Fair Housing Act is not limited to claims of intentional discrimination, and the views of the EEOC regarding Title VII. The case law cited by the commenters fails to support the proposition that the Fair Housing Act requires discriminatory intent in order to find a housing provider liable for its negligent failure to correct resident-on-resident or other third-party discriminatory conduct. The district court decision in *Francis* v. *Kings Park Manor* is the sole exception to that principle, and HUD disagrees with its ruling. HUD notes that this decision is on appeal to the Second Circuit.

Section 100.7(a)(1)(iii) sets out a negligence standard of liability, which does not require proof of discriminatory

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argument that it had no duty to stop harassment of plaintiff by other residents and holding that association could be liable where evidence indicated that association knew of the harassment and bylaws authorized the association to regulate such conduct); *see also Bradley* v. *Carydale Enterprises*, 707 F. Supp. 217 (E.D. Va. 1989) (finding that owners and managers' failure to address one tenant's racial harassment of a neighboring tenant states a claim under 42 U.S.C. 1981, 1982).

[31] *See, e.g., Wilstein* v. *San Tropai Condo. Master Ass'n,* supra*28–33; *Reeves* v. *Carrollsburg Condo. Unit Owners Ass'n,* 1997 U.S. Dist. LEXIS 21762, *26. *See also Freeman* v. *Dal-Tile Corp.,* 750 F. 3d 413, 422–23 (4th Cir. 2014) (holding that "an employer is liable under Title VII for third parties creating a hostile work environment if the employer knew or should have known of the harassment and failed to take prompt remedial action reasonably calculated to end [it].") (internal quotation marks and citations omitted); *Galdamez* v. *Potter,* 415 F. 3d 1015, 1022 (9th Cir. 2005) ("An employer may be held liable for the actionable third-party harassment of its employees where it ratifies or condones the conduct by failing to investigate and remedy it after learning of it.").

[32] *See e.g., Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 380 (1982) (Congress intended Fair Housing Act to be broadly remedial); *cf. Jones* v. *Alfred H. Mayer Co.,* 392 U.S. 409, 413 (1968) (describing the Fair Housing Act as "a comprehensive open housing law"); 42 U.S.C. 3601 ("It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.").

intent or animus on the part of the provider, but is far from strict liability. Under this standard, a plaintiff or the charging party must prove three elements to establish a housing provider's liability for third-party harassment: (1) The third-party created a hostile environment for the plaintiff or complainant; (2) the housing provider knew or should have known about the conduct creating the hostile environment; and (3) the housing provider failed to take prompt action to correct and end the harassment while having the power to do so. HUD does not agree that a fourth element—that the housing provider's failure to act was more than negligent, and was motivated by discriminatory intent—is necessary or appropriate.

Contrary to one comment, the Supreme Court in *Inclusive Communities Project* has already ruled that the "because of" clause in the Fair Housing Act does not require proof of discriminatory intent. While not addressing every aspect of the cited decisions, HUD notes the following: In *Lawrence* v. *Courtyards of Deerwood Ass'n,* cited by another commenter, the court dismissed the discriminatory harassment claim not for lack of discriminatory intent on the part of the landlord, but because it found, *inter alia,* that the dispute did not involve discriminatory harassment of one tenant by another but instead reflected mutual antagonism between two tenants. The court in *Lawrence* distinguished *Reeves* v. *Carrollsburg Condo. Unit Owners Ass'n,* 1997 U.S. Dist. LEXIS 21762, *22 (D.D.C 1997), which held the landlord liable under the Fair Housing Act for its failure to adequately address sexual harassment of one tenant by another because "the [Carrollsburg Condo] association's by-laws specifically authorized the association to curtail conduct that contravened the law" and provided that a violation of local or federal law was a violation of the association rules.[33]

Finally, the state court decision cited by one commenter did not involve claims under the Fair Housing Act and does not provide reason for HUD to alter § 100.7(a)(1)(iii) at the final rule stage. In *Ohio Civil Rights Commission* v. *Akron Metropolitan Housing Authority,* the Ohio Supreme Court's refusal to hold a landlord liable under a state civil rights law for failing to take corrective action in response to one tenant's racial harassment of another tenant was premised on an incorrect reading of Title VII jurisprudence. The court misconstrued Title VII case law to require an agency relationship between an employer and a perpetrator of harassment in order to hold the employer liable for negligently failing to stop sexual harassment by the perpetrator.[34] In fact, under Title VII, an agency relationship is *not* required in order to hold employers liable for negligently failing to stop discriminatory harassment of which the employer knew or should have known. Both the EEOC and the federal courts have recognized that an employer may be held liable for negligently failing to stop discriminatory harassment in the workplace by non-employees or non-agents.[35] The principle of liability codified in § 100.7(a)(1)(iii) of this final rule is consistent with these Title VII authorities and, in HUD's view, appropriately serves the Fair Housing Act's parallel antidiscrimination objectives in the housing context. In sum, the proposed rule and this final rule reflect HUD's considered judgment, consistent with prevailing precedent and EEOC regulations, that a housing provider (including a homeowner's association) or property manager is liable under the Act for negligently failing to take corrective action against a third-party harasser when the provider or manager knew or should have known of the harassment and had the power to end it. In light of the above, HUD declines to make the proposed revisions to the final rule.

*Issue:* A commenter stated that the imposition of liability on private landlords for tenant-on-tenant harassment is inappropriate and will have several negative consequences. The commenter stated that private owners do not have the expertise or resources to undertake what is essentially a social services function to mediate disputes between neighbors. In addition, the commenter expressed concern that the proposed rule could make it more difficult and risky for property owners to take affirmative steps to operate racially integrated housing. The commenter stated that the rule will be an economic disincentive for individuals, companies, and other investors to engage in the business of renting residential real estate and that the Section 8 voucher program depends on the participation of these private entities in order to achieve other fair housing goals. The commenter expressed concern that the effect of the proposed rule will be to reduce the supply of available affordable units, thus disproportionately harming low-income families. Other commenters raised concerns that landlords, when confronted by tenants who mutually accuse each other of harassment, will be unable to take necessary corrective actions because of the rule's prohibition against moving or causing injury to a complaining tenant, or will reprimand the wrong tenant because they lack expertise with investigations.

Numerous other commenters supported the rule's recognition that a housing provider may be directly liable for harassment of a tenant by the housing provider's employee or a third-party. These commenters stated that any suggestion that this rule will unduly burden housing providers is exaggerated, that the rule is wholly consistent with the ordinary responsibilities of housing providers to ensure habitability, and that housing providers are familiar with the tools they have to enforce their own rules—tools they frequently wield.

*HUD Response:* The rule does not create new or enhanced liabilities for housing providers, including those who participate in the Section 8 program. HUD believes that this rule will help clarify the obligations that housing providers already have in offering and maintaining housing environments free from discrimination and that comply with the Fair Housing Act. We are long past the time when racial harassment is a tolerable price for integrated housing; a housing provider is responsible for maintaining its properties free from all discrimination prohibited by the Fair Housing Act. Under the Act, discriminatory practices are those that violate sections 804, 805, 806, or 818. Such practices do not encompass all incivilities, and thus it is important to note that not every quarrel among neighbors amounts to a violation of the Fair Housing Act.[36] Ending harassing or

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[33] *Lawrence* v. *Courtyards of Deerwood Ass'n,* 318 F. Supp. 2d at 1149 (citing *Reeves* v. *Carrollsburg Condo. Unit Owners Ass'n,* 1997 U.S. Dist. LEXIS 21762 at *22.

[34] 892 NE.2d at 419–20.

[35] *See* 29 CFR 1604.11(e) ("An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where there employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action."); *see also, e.g., Freeman* v. *Dal-Tile Corp.,* 750 F.3d 413, 422–24 (4th Cir. 2014) (employer potentially liable for failing to address discriminatory harassment by a customer); *Lockard* v. *Pizza Hut, Inc.,* 162 F.3d 1062, 1072–75 (10th Cir. 1998) (same; collecting cases recognizing employer liability for failing to correct third-party harassment).

[36] *See, e.g., Bloch* v. *Frischholz,* 587 F.3d at 783 (quoting *Halprin* v. *Prairie Single Family Homes of Dearborn Park Ass'n,* 388 F.3d 327, 330 (7th Cir. 2004) (noting that interference under § 818 "is more than a 'quarrel among neighbors' "); *Sporn* v. *Ocean Colony Condominium Assn,* 173 F. Supp. 2d 244, 251–52 (D.N.J. 2001) (noting that section 818 "does

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otherwise discriminatory conduct may necessitate evicting the tenant who has engaged in the conduct, not the aggrieved tenant.[37] The Act does not, however, prohibit housing providers from offering to move an aggrieved tenant, as long as that tenant may refuse the offer without consequence or retaliation.

*Issue:* Some commenters stated that the proposed rule outlining third-party liability conflicts with HUD's PIH Notice 2015–19, titled Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions. One commenter was concerned that PIH Notice 2015–19 makes it harder for PHAs to correct situations that may lead to hostile environment harassment, while the proposed harassment rule would make it easier for PHAs to be held liable for the activities of tenants who take actions against other tenants to create a hostile environment. Another commenter was concerned that PHAs would be forced to choose whether to comply with HUD's harassment rule or with HUD's Notice, which prohibits the use of an arrest record as evidence of criminal activity that can support an adverse admission, termination, or eviction decision. These commenters therefore asked HUD to remove third-party liability from the rule.

*HUD Response:* HUD believes the commenters' concerns are misplaced because there is no conflict between this rule and PIH Notice 2015–19. The rule does not add any new forms of liability under the Fair Housing Act and the formalization of clear and consistent standards for evaluating harassment claims under the Act does not conflict with the requirements of the PIH Notice. Compliance with PIH Notice 2015–19 does not prevent a PHA from considering reliable evidence of relevant criminal activity when considering how to respond to complaints of harassment. Nor does this rule require a PHA to make use of arrest records to determine whether discriminatory harassment has occurred. Consistent with traditional tort liability principles, as well as current federal Fair Housing Act jurisprudence, this rule codifies HUD's longstanding view that a property owner, including a PHA, may be held liable for failing to take corrective action within its power in response to tenant-on-tenant harassment of which the owner knew or should have known. Where a PHA receives a complaint or otherwise learns of possible discriminatory harassment of one resident by another, the PHA is advised to assess the situation and, if necessary, take appropriate corrective action to end the harassment.

*Issue:* Several commenters expressed concern that application of the rule would conflict with HUD's homeless or permanent supportive housing programs or might have a detrimental effect on persons with mental disabilities. A commenter stated that tenants with severe mental health disabilities may create a hostile environment for neighbors and asked HUD to explain what direct responsibility the housing provider has to correct negative behaviors. A commenter stated that the rule incentivizes evictions over efforts to determine whether a reasonable accommodation might be appropriate for persons with mental disabilities. Another commenter stated that because tenants with mental illness often have difficulty finding housing, the proposed rule might result in an increased rate of homelessness among persons with mental disabilities. A commenter asked HUD to revisit the proposed rule's third-party liability provision to avoid harming this particularly vulnerable population.

Other commenters stated that the rule would help protect many vulnerable persons from eviction. These commenters supported the statement in the proposed rule's preamble that eviction is only one of the many corrective actions housing providers may utilize to address harassment.

*HUD Response:* The rule neither changes a housing provider's responsibilities toward tenants with mental disabilities nor incentivizes evictions of such persons. It is not uncommon for the behavior of one tenant to frustrate, displease, or annoy another tenant. This is true for behavior by tenants with and without psychiatric disabilities. The rule does not require a housing provider to take action whenever one tenant engages in behavior that another tenant finds objectionable. The Act prohibits discrimination against applicants and tenants with disabilities, including evicting individuals with disabilities because other tenants find them frustrating, displeasing, or annoying. The Act does not, however, require that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of others or would result in substantial physical damage to the property of others.[38] The housing provider must make an individualized assessment as to whether such a threat exists based on reliable objective evidence that considers: (1) The nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. In evaluating a recent history of overt acts, a housing provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat. Reasonable accommodations must be made when they may be necessary to afford such persons an equal opportunity to use and enjoy a dwelling. HUD refers the reader to the Joint Statement of HUD and DOJ on Reasonable Accommodations under the Fair Housing Act for further information.[39]

### 1. Corrective Action: § 100.7(a)(2)

*Issue:* A commenter asked HUD to remove the prohibition against causing injury to a complaining party.

*HUD Response:* HUD declines to remove the prohibition on causing additional injury to a person who has already been injured by illegal harassment. Permitting such additional injury would be inconsistent with the Act's purposes to prevent unlawful discrimination and remedy discrimination that has already occurred.

*Issue:* One commenter requested further guidance as to what constitutes appropriate corrective action by a housing provider to stop tenant-on-tenant harassment. The commenter specifically inquired whether a single verbal statement by a landlord to a tenant who allegedly engaged in harassing conduct would be sufficient corrective action to relieve a landlord from liability under the rule. Another commenter asked HUD to impose realistic and reasonable limitations on housing providers' obligation to take corrective action.

*HUD Response:* There is no one way that a housing provider must respond to complaints of third-party harassment,

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not [] impose a code of civility" on neighbors); *United States* v. *Weisz,* 914 F. Supp. 1050, 1054–55 (S.D.N.Y. 1996) (holding that allegations that Jewish neighbor harassed complainants because of their religion were "nothing more than a series of skirmishes in an unfortunate war between neighbors"). *But see Ohana* v. *180 Prospect Place,* 996 F. Supp. 238, 243 (E.D.N.Y. 1998) (neighbors who intentionally intrude upon quietude of another's home may violate Act).

[37] *See, e.g., Miller* v. *Towne Oaks East Apartments,* 797 F. Supp. 557, 562 (E.D. Tex.1992) (finding landlord liable for violating Act by evicting both harasser and victim of harassment instead of only harasser).

[38] 42 U.S.C. 3604(f)(9).

[39] *See* Joint Statement of HUD and DOJ on Reasonable Accommodations Under the Fair Housing Act (May 17, 2004), posted at *http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.*

although the rule makes clear that a provider that fails to effectively respond may be subject to liability under the Act. Section 100.7(a)(2) provides that corrective actions must be effective in ending the discrimination, but may not injure the aggrieved persons. For example, corrective actions appropriate for a housing provider to utilize to stop tenant-on-tenant harassment or other third-party harassment might include verbal and written warnings; enforcing lease provisions to move, evict, or otherwise sanction tenants who harass or permit guests to harass; issuing no-trespass orders against guests; or reporting conduct to the police. What constitutes appropriate and effective corrective action will depend on the nature, frequency, and severity of the harassment. While in some cases a single verbal reprimand by a housing provider may be sufficient to effectively end discriminatory harassment of one tenant by another, the housing provider should notify the victim that such action was taken, and it is advisable for the housing provider to document this action in its records. Additionally, the housing provider should follow up with the victim of the harassment after the corrective action is taken to ensure that it was effective. If the housing provider knows or should have known that the corrective action was ineffective, the provider has a responsibility to take additional corrective actions within its power. If, however, corrective action is effective in ending the discriminatory conduct, a housing provider is not required to take additional action simply because the victim believes further action should have been taken. HUD does not agree that there is a need to add a specific limitation on a housing provider's responsibility to take corrective action within its power to act in response to discriminatory harassment of which the provider knew or should have known.

*Issue:* A commenter stated that because tenants are not agents or employees, landlords cannot simply compel tenants to take or avoid particular action and do not have the ability to shape or alter tenants' behavior beyond threatening and carrying out evictions. Another commenter asked HUD to consider that there are substantial practical differences between the ability of housing providers to take corrective action to end tenant-on-tenant harassment and their ability to control the actions of their employees because there is no agency relationship in the former. Another commenter stated that most homeowners would be very concerned if association board members, employees, or agents injected themselves into the interpersonal relationships of homeowners and residents to investigate their interactions and relationships for discriminatory elements. This commenter also said that for PHAs, eviction is often unavailable as a remedy for alleged tenant-on-tenant harassment because the U.S. Housing Act of 1937 and federal regulations limit the ability of PHAs to carry out evictions, except for specified causes. In addition, the commenter stated that the result of these restrictions and the proposed rule would be to create significant new liability for PHAs for tenant-on-tenant harassment without creating any new mechanisms for PHAs to mitigate this liability.

In contrast, other commenters stated that the rule does not create any new liability because landlords have an obligation to protect tenants' rights to quiet enjoyment and generally have the right to take actions against renters and occupants who disturb the quiet enjoyment of others.

*HUD Response:* Neither the proposed rule nor this final rule create new liability for housing providers, including PHAs or homeowner's associations, regarding resident-on-resident harassment. Nor does the rule require a housing provider to take action that is beyond the scope of its power to act. HUD recognizes that specific remedies that may be available to employers to stop an employee's illegal practices will be distinct from those that a housing provider may use to stop residents who are engaging in discriminatory conduct. Creating and posting policy statements against harassment and establishing complaint procedures, offering fair housing training to residents and mediating disputes before they escalate, issuing verbal and written warnings and notices of rule violations, enforcing bylaws prohibiting illegal or disruptive conduct, issuing and enforcing notices to quit, issuing threats of eviction and, if necessary, enforcing evictions and involving the police are powerful tools available to a housing provider to control or remedy a tenant's illegal conduct. These tools are also available to PHAs, and, contrary to one commenter's concern, eviction is available to a PHA to correct a tenant's discriminatory conduct as the PHA may terminate a tenancy for "serious or repeated violation of material terms of the lease," 24 CFR 966.4(l)(2)(i), which include the obligation that tenants must "act . . . in a manner which will not disturb other residents' peaceful enjoyment of their accommodations. . . ." 24 CFR 966.4(f)(11).

*Issue:* A commenter expressed concern that a PHA may be held directly liable for failing to correct actions by third-parties over whom they have little or no control. As an example, the commenter cited harassment of a voucher-holding tenant by neighbors who are not also voucher-holders and not otherwise affiliated with the PHA. Similarly, another commenter stated that the rule could be interpreted to make landlords liable for conduct that occurs off their property or that has nothing to do with a tenant's home.

*HUD Response:* This rule describes the standard for assessing liability under the Fair Housing Act. These fair housing standards apply to private and public landlords alike and do not turn on whether a tenant holds a Housing Choice Voucher or receives other government rental assistance. HUD also reiterates that a housing provider is not responsible for correcting every negative action by any third-party. Rather, the third-party action must constitute a discriminatory housing practice as defined by the Act, and the housing provider must have the power to correct it. As provided in the final rule and discussed elsewhere in this preamble, whether a housing provider has the power to take corrective measures in a specific situation—and what corrective measures are appropriate—is dependent on the facts, including the extent of control or any other legal responsibility the person may have with respect to the conduct of such third-party. There may be instances where the ability to correct the unlawful conduct is beyond a housing provider's control. Thus, when confronted with discriminatory harassment of one of its Housing Choice Voucher-holders or other tenants, the housing agency should explore what corrective actions are within its power and are appropriate to take.

*Issue:* A commenter suggested that an unintended consequence of the proposed rule could be that property owners would remove security devices, such as video cameras and other surveillance mechanisms, for fear that such measures may create a duty on the part of the property owner to correct neighbor-on-neighbor harassment. In contrast, other commenters stated that housing providers may feel the need to provide for more oversight of residences which may interfere with residents' right to peaceful enjoyment of their dwelling.

*HUD Response:* Removing security devices will not relieve a housing provider of its obligation to take the actions within its power to promptly correct and end a discriminatory housing practice. Elsewhere in the preamble, HUD discusses various options that may be available to housing providers to address neighbor-on-neighbor harassment.

*Issue:* A commenter stated that owners should be encouraged to use positive incentives, such as promoting better communication with—and healthy relationships among—tenants, and educating tenants about their rights to prevent harassment, instead of taking corrective actions that may harm tenants, such as ending a lease or evicting a tenant—.

*HUD Response:* HUD agrees that positive incentives are useful tools for preventing harassment. HUD believes, however, that warnings, threats of evictions, evictions, and lease terminations may also be necessary corrective actions to end harassment. The preamble and rule make clear that there is no one way to prevent or correct harassment, only that the methods need to be effective at ending it.

### c. Vicarious Liability: § 100.7(b)

*Issue:* Several commenters questioned the description of vicarious liability at § 100.7(b) of the proposed rule. One commenter said § 100.7(b) could be interpreted to impose vicarious liability on an organization's directors, officers, or owners and suggested HUD clarify, consistent with *Meyer* v. *Holley*, that it is the organization—not the individual directors, officers, or board members—who are the "principal or employer" subject to vicarious liability under the Fair Housing Act. The commenter asked HUD to issue clarification that the proposed regulations do not contravene or attempt to reverse *Meyer* v. *Holley*, 537 U.S. 280 (2003). In contrast, other commenters applauded the description of vicarious liability in the rule, stated that the description follows well-established common law tort and agency principles, and expressed support for the proposed rule's reliance on *Meyer* v. *Holley*.

*HUD Response:* Subsection 100.7(b) merely describes the well-established concept of vicarious liability, under which principals may be held liable for the discriminatory acts of their agents or employees whether or not they knew of the discriminatory conduct. As articulated in *Meyer* v. *Holley*, and as explained in the preambles to the proposed rule and this final rule, traditional agency principles apply to the Fair Housing Act.[40] Under agency principles, a principal is vicariously liable for the actions of his or her agents taken within the scope of their relationship or employment, or for actions taken outside the scope of their relationship or employment when the agent is aided in the commission of such acts by the existence of the agency relationship.[41] Determining whether an agency relationship exists is a factual determination that looks to an agent's responsibilities, duties, and functions; whether the discriminatory conduct of the agent was within the scope of the agency relationship or aided by the existence of the agency relationship is also a fact-specific inquiry.

*Issue:* Some commenters questioned the statement in the proposed rule's preamble that a principal is vicariously liable for the actions of an agent or employee taken outside the scope of the agency relationship or employment when the agent or employee is aided in the commission of such acts by the existence of the agency relationship. A commenter agreed that a principal is vicariously liable for the acts of its agents committed within the scope of the agency, regardless of knowledge or intent to violate the Act by the principal, but believes that, in adopting the "aided in agency" standard, the proposed rule goes beyond traditional tort concepts and does not reflect the limited concepts of vicarious liability endorsed in *Meyer* v. *Holley*. The commenter considered it acceptable to hold a real estate company liable for discriminatory acts or statements made by its brokers in the scope of their agency, but disagreed that a housing provider should be liable for misconduct of a janitorial employee outside the scope of that employee's duty because he wore a badged uniform or possessed keys or passes to tenants' dwellings. Another commenter asked for clarity on the reasoning behind the assertion in the preamble to the proposed rule that an agent who harasses residents or applicants is necessarily aided by his or her agency relationship with the housing provider.

*HUD Response:* As discussed throughout this preamble, the proposed and final rule do not create new forms of liability. Instead, HUD has decided to adopt well-established principles of agency law, including that a principal may be vicariously liable for the actions of an agent or employee that are taken outside the scope of the employment or agency relationship if the agent or employee is aided in committing the acts by the existence of the employment or agency relationship. Agency law must be applied to the specific facts at issue to determine whether such a situation exists and gives rise to a principal's liability. The statement in the proposed rule that an agent who engages in hostile environment harassment of residents or applicants is aided by the agency relationship with the housing provider was not intended to suggest the agent is necessarily so aided with respect to every discriminatory housing practice. It was intended to explain one of the reasons HUD chose not to import into the Fair Housing Act the Title VII affirmative defense to an employer's vicarious liability for hostile environment harassment. As explained in that context, a housing provider's agent who engages in harassment holds a position of power and authority over the victimized resident or applicant, regardless of the agent's specific duties. This is because a resident or applicant has only an arms-length economic relationship with the housing provider, while an agent-perpetrator is clothed with the authority of the housing provider. Given this inherent imbalance of power and control over the terms or conditions of the housing environment, the distinction between harassment by supervisory and non-supervisory employees that supported the creation of the affirmative defense in the employment context do not extend to the housing context.

### D. Other Issues

*Issue:* A commenter stated that HUD should apply the proposed rule only to its own investigative and administrative actions and should not purport to preempt court-established rules. The commenter stated that in some instances it may be appropriate for federal courts to defer to agency rules, but that this is not a case where *Chevron*[42] deference is appropriate because HUD is not basing the rule on its own experience, but largely on interpretations of federal court decisions. The commenter stated that HUD has no particular expertise in tort law and no authority to interpret tort laws. Another commenter stated that HUD appears to be using the administrative rule-making process to substitute its views for those of the courts, and that HUD must pursue the change it seeks through Congress and/or the courts.

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[40] 537 U.S. at 282, 287.

[41] *See, e.g., Glover* v. *Jones*, 522 F. Supp. 2d 496, 507 (W.D.N.Y. 2007) (holding that "a property owner may be vicariously liable under the Fair Housing Act for the actions of an employee even when they are outside the scope of employment . . . if the employee was aided in accomplishing the tort by the existence of the agency relation.") (quoting *Mack* v. *Otis Elevator Co.*, 326 F. 3d 116, 123 (2d Cir. 2003) (internal quotation marks omitted); *see also Boswell* v. *GumBayTay*, No. 2:07–CV–135–WKW[WO], 2009 U.S. Dist. LEXIS 45954, *17 (M.D. Ala. June 1, 2009) (holding that vicarious liability attached to property owner where property manager's "position essentially gave him unfettered access to communicate with and personally visit [the plaintiff]" and he "used his power as property manager as a vehicle through which to perpetrate his unlawful conduct by refusing repairs, raising the rent, and attempting to evict [the plaintiff] as a consequence for [her] refusal to provide sexual favors."); *Glover* at 522 F. Supp. 2d at 507 (rejecting defendant property owner's motion for summary judgment on the issue of vicarious liability where evidence showed that property manager used his "position as the de facto landlord to perpetrate FHA [harassment] violations . . . giving] him the opportunity to visit the apartment when he wanted, and enabl[ing] him to control Plaintiff's rent"); *Richards* v. *Bono*, 2005 U.S. Dist. LEXIS 43585 at *30 (holding that wife/co-owner of property could be vicariously liable for husband's harassment where husband acted as her agent and used his position as owner, property manager, and maintenance supervisor to subject plaintiff to sexual harassment by using a key to enter plaintiff's apartment and threatening plaintiff with eviction).

*HUD Response:* The commenters misconstrue both the rule and HUD's authority under the Act. The Act specifically grants the Secretary of HUD the authority and responsibility to administer and enforce the Act, including promulgating rules to carry out the Act.[43] This rule-making authority is not limited to HUD's investigations or administrative proceedings. Moreover, the rule does not construe tort law, but rather clarifies standards for liability under this part, based on traditional principles of tort liability. It imposes no new legal obligations or duties of care. In addition, the introductory portion of this preamble describes the grounds for *Chevron* deference.

*Issue:* Some commenters disagreed with HUD's statement in the preamble to the proposed rule that the rule does not create additional costs for housing providers and others covered by the Fair Housing Act. They stated that the proposed rule would lead to increased costs for and litigation against housing providers. Among the other costs cited by commenters are costs for compliance and training, increased insurance premiums, and increased liability because many housing providers would not have the ability to remain diligent to address all harassment claims, leaving them vulnerable to litigation. Another commenter said that the proposed rule creates the possibility for substantial judgments for money damages that PHAs have little ability to pay, because they may not use federal funds to pay judgments for damages.

*HUD Response:* As noted throughout this preamble, this final rule does not impose any new or enhanced liabilities. Rather, it clarifies existing law under the Fair Housing Act and well-established common law tort and agency principles as they apply under the Act. The rule does not change substantive obligations, but merely formalizes them in a regulation. Because the standards articulated in the rule are already law, the risks of liability and costs of complying will not increase with issuance of the rule. HUD presumes that the vast majority of housing providers are in compliance with the law. Any costs incurred by housing providers to come into compliance as a result of this rulemaking will simply be the costs of compliance with a preexisting statute, administrative practice, and case law. In fact, by formalizing uniform standards for investigations and adjudications under the Fair Housing Act, the rule serves to reduce costs for housing providers by establishing greater clarity with respect to how a determination of liability is to be made.

## V. Findings and Certifications

### *Regulatory Review—Executive Orders 12866 and 13563*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

This rule establishes uniform standards for use in investigations and processing cases involving harassment and liability under the Fair Housing Act. In establishing such standards, HUD is exercising its rulemaking authority to bring uniformity, clarity, and certainty to an area of legal practice.

The docket file for this rule is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

### *Environmental Impact*

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. This rule is limited to the procedures governing fair housing enforcement. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 4321, *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The rule establishes standards for evaluating claims of harassment and liability under the Fair Housing Act. The scope of the rule is procedural, and the regulatory changes do not establish any substantive regulatory burdens on small entities. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

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[42] *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[43] 42 U.S.C. 3608(a), 3610, 3615.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or (2) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

*Catalogue of Federal Domestic Assistance*

The Catalogue of Federal Domestic Assistance Number for the equal opportunity in housing program is 14.400.

**List of Subjects in 24 CFR Part 100**

Aged, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, and in accordance with HUD's authority in 42 U.S.C. 3535(d), HUD amends 24 CFR part 100 as follows:

## PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority citation for 24 CFR part 100 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 3600–3620.

■ 2. Add § 100.7 to read as follows:

### § 100.7 Liability for discriminatory housing practices.

(a) *Direct liability.* (1) A person is directly liable for:

(i) The person's own conduct that results in a discriminatory housing practice.

(ii) Failing to take prompt action to correct and end a discriminatory housing practice by that person's employee or agent, where the person knew or should have known of the discriminatory conduct.

(iii) Failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct and end a discriminatory housing practice by a third-party depends upon the extent of the person's control or any other legal responsibility the person may have with respect to the conduct of such third-party.

(2) For purposes of determining liability under paragraphs (a)(1)(ii) and (iii) of this section, prompt action to correct and end the discriminatory housing practice may not include any action that penalizes or harms the aggrieved person, such as eviction of the aggrieved person.

(b) *Vicarious liability.* A person is vicariously liable for a discriminatory housing practice by the person's agent or employee, regardless of whether the person knew or should have known of the conduct that resulted in a discriminatory housing practice, consistent with agency law.

■ 3. In § 100.60, add paragraphs (b)(6) and (7) to read as follows:

### § 100.60 Unlawful refusal to sell or rent or to negotiate for the sale or rental.

* * * * *

(b) * * *

(6) Conditioning the availability of a dwelling, including the price, qualification criteria, or standards or procedures for securing the dwelling, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that causes the person to vacate a dwelling or abandon efforts to secure the dwelling.

■ 4. In § 100.65, add paragraphs (b)(6) and (7) to read as follows:

### § 100.65 Discrimination in terms, conditions and privileges and in services and facilities.

* * * * *

(b) * * *

(6) Conditioning the terms, conditions, or privileges relating to the sale or rental of a dwelling, or denying or limiting the services or facilities in connection therewith, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(7) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms, conditions, or privileges relating to the sale or rental of a dwelling or denying or limiting services or facilities in connection with the sale or rental of a dwelling.

■ 5. In § 100.80, add paragraph (b)(6) to read as follows:

### § 100.80 Discriminatory representation on the availability of dwellings.

* * * * *

(b) * * *

(6) Representing to an applicant that a unit is unavailable because of the applicant's response to a request for a sexual favor or other harassment because of race, color, religion, sex, handicap, familial status, or national origin.

■ 6. In § 100.90, add paragraphs (b)(5) and (6) to read as follows:

### § 100.90 Discrimination in the provision of brokerage services.

* * * * *

(b) * * *

(5) Conditioning access to brokerage services on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(6) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of discouraging or denying access to brokerage services.

■ 7. In § 100.120, add paragraphs (b)(3) and (4) to read as follows:

### § 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

* * * * *

(b) * * *

(3) Conditioning the availability of a loan or other financial assistance on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(4) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that affects the availability of a loan or other financial assistance.

■ 8. In § 100.130, add paragraphs (b)(4) and (5) to read as follows:

### § 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

* * * * *

(b) * * *

(4) Conditioning an aspect of a loan or other financial assistance to be provided with respect to a dwelling, or the terms or conditions thereof, on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

(5) Subjecting a person to harassment because of race, color, religion, sex, handicap, familial status, or national origin that has the effect of imposing different terms or conditions for the availability of such loans or other financial assistance.

■ 9. In § 100.135, revise paragraph (d) to read as follows:

### § 100.135 Unlawful practices in the selling, brokering, or appraising of residential real property.

* * * * *

(d) Practices which are unlawful under this section include, but are not limited to:

(1) Using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, handicap, familial status, or national origin.

(2) Conditioning the terms of an appraisal of residential real property in connection with the sale, rental, or financing of a dwelling on a person's response to harassment because of race, color, religion, sex, handicap, familial status, or national origin.

■ 10. In § 100.400, add paragraph (c)(6) to read as follows:

### § 100.400 Prohibited interference, coercion or intimidation.

* * * * *

(c) * * *

(6) Retaliating against any person because that person reported a discriminatory housing practice to a housing provider or other authority.

■ 11. Add subpart H, consisting of § 100.600, to read as follows:

## Subpart H— Quid Pro Quo and Hostile Environment Harassment

### § 100.600 Quid pro quo and hostile environment harassment.

(a) *General.* Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate sections 804, 805, 806 or 818 of the Act, depending on the conduct. The same conduct may violate one or more of these provisions.

(1) *Quid pro quo harassment.* Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

(2) *Hostile environment harassment.* Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

(i) *Totality of the circumstances.* Whether hostile environment harassment exists depends upon the totality of the circumstances.

(A) Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(B) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled.

(C) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.

(ii) *Title VII affirmative defense.* The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 does not apply to cases brought pursuant to the Fair Housing Act.

(b) *Type of conduct.* Harassment can be written, verbal, or other conduct, and does not require physical contact.

(c) *Number of incidents.* A single incident of harassment because of race, color, religion, sex, familial status, national origin, or handicap may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment, or evidences a quid pro quo.

Dated: August 18, 2016.

**Gustavo Velasquez,**

*Assistant Secretary for Fair Housing and Equal Opportunity.*

[FR Doc. 2016–21868 Filed 9–13–16; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Parts 100 and 165

[Docket Number USCG–2015–0854]

RIN 1625–AA00, AA08

## Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule that revises the list of special local regulations and safety zones established for recurring marine events and fireworks displays that take place within the Fifth Coast Guard District area of responsibility. This rule revises the listing of events that informs the public of regularly scheduled marine parades, regattas, other organized water events, and fireworks displays that require additional safety measures provided by regulations. Under this rule, the list of recurring marine events requiring special local regulations or safety zones is updated with revisions, additional events, and removal of events that no longer take place in the Fifth Coast Guard District. When these regulations are enforced, certain restrictions are placed on marine traffic in specified areas. This rulemaking project promotes efficiency by eliminating the need to produce a separate rule for each individual recurring event, and serves to provide notice of the known recurring events requiring a special local regulation or safety zone throughout the year.

**DATES:** This rule is effective October 14, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–0854 in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this rulemaking, call or email Dennis Sens, Fifth Coast Guard District, Prevention Division, (757) 398–6204, *Dennis.M.Sens@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

| | |
|---|---|
| CFR | Code of Federal Regulations |
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| § | Section |
| U.S.C. | United States Code |
| USCG | United States Coast Guard |

## II. Background Information and Regulatory History

The special local regulations listed in 33 CFR 100.501 and safety zones in 33 CFR 165.506 were last amended on April 16, 2015 (80 FR 20418). The Coast Guard published an interim final rule and request for comments on April 22, 2016 (81 FR 23605). During the comment period that ended July 21, 2016 we received one comment.

## III. Legal Authority and Need for Rule

The Coast Guard issues this rulemaking under authority in 33 U.S.C. 1231; 33 U.S.C. 1233; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard regularly updates special local regulations and safety zones established for recurring marine events and fireworks displays that take place either on or over the navigable waters of the United States. Under that rule, the list of recurring marine events requiring special local regulations or safety zones is updated with revisions, additional events, and removal of events that no longer take place within the Fifth Coast Guard District. The Fifth Coast Guard District area of responsibility is defined in 33 CFR 3.25.

The purpose of this rulemaking is to ensure the safety of persons, vessels and the navigable waters within close proximity to marine events and or fireworks displays before, during, and after the scheduled event. Publishing these regulatory updates in a single rulemaking promotes administrative efficiency and reduces costs involved in producing a separate rule for each individual recurring event. This action also provides the public with notice through publication in the **Federal Register** of future recurring marine events and fireworks displays and their accompanying regulations, special local regulations and safety zones. This rule provides separate tables for each Coast Guard Sector within the Fifth Coast Guard District.

## IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on the Interim final rule published April 22, 2016. The respondent comment addressed a concern that "Any permits for Fireworks Displays must have boundaries set no closer than 500 yards from any fuel depot, shipyard, marina, cargo facility that handles hazardous or flammable cargo or any "facility" that handles hazardous or flammable materials." The commenter suggested that the safety zone radius should be a distance of 500 yards plus the expected radius of the "hot" area created by the fireworks display.

No changes were made to the rule based upon this comment; however the Coast Guard recognizes the importance of appropriate controls on fireworks displays that take place over and or adjacent to navigable waters of the United States. Accordingly USCG authority and oversight is based on current Federal regulations, applicable National Fire Protection Association (NFPA) codes, and lessons learned from accident report findings. We believe these recommendations provide a more thorough and nuanced safety area than a blanket radius requirement. The CG Captain of the Port (COTP) ensures safety of persons and vessels on navigable waters of the United States in close proximity to fireworks events through coordination with event sponsor, fireworks operator, fire department, police department, Authority Having Jurisdiction (AHJ), and other appropriate entities. The definition of "Authority Having Jurisdiction (AHJ)" is in accordance with NFPA 1123 which states, "The organization, office, or individual responsible for approving equipment, materials, an installation, or a procedure." It is incumbent upon the event sponsor and or fireworks operator to consult with AHJ regarding fireworks display boundaries for restricted areas when seeking a fireworks permit. Under this arrangement the fireworks operator should provide a copy of the fireworks permit issued by the AHJ to the COTP to confirm compliance with local government regulations, ordinances and NFPA codes. The safety guidance provided in NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 702, dated June 18, 2002 sets forth Coast Guard policy used by USCG Captains of the Port; this document may be viewed in the docket.

### *Special Local Regulations*

This rule adds 4 new special local regulations for marine events, removes 8 regulations and revises 18 previously established regulations for marine events listed in the Table to § 100.501. Other than changes to the dates and locations of certain events, the other provisions in 33 CFR 100.501 remain unchanged.

This rule provides additional information about regulated areas and the restrictions that apply to mariners and new terms including "Race Area", "Spectator Area" and "Buffer Zone". The 24 hour contact phone numbers are updated for Coast Guard Sectors Delaware Bay and North Carolina.

The Coast Guard revises regulations at 33 CFR 100.501 by adding 4 new special local regulations. The special local regulations are listed in Table 1, including reference by section as printed in the Table to § 100.501.

TABLE 1

[Special local regulated areas added to 33 CFR 100.501]

| Table to § 100.501 section | Location |
|---|---|
| 1. (b.) 22 | Choptank River, Cambridge, MD. |
| 2. (b.) 23 | Breton Bay, Leonardtown, MD. |
| 3. (b.) 24 | Patapsco River, Baltimore, MD. |
| 4. (d.) 1 | Atlantic ICW, Lees Cut, Banks Channel, Motts Channel, surrounding Harbor Island, NC. |

The Coast Guard amends regulations at 33 CFR 100.501 by disestablishing the following 8 special local regulated areas listed in Table 2.

TABLE 2

[Special local regulated areas removed from 33 CFR 100.501]

| Date(s) | Event | Regulated area |
|---|---|---|
| 1. September—2nd, 3rd or 4th Friday, Saturday and Sunday; October—1st Friday, Saturday and Sunday. | Sunset Lake Hydrofest. | All waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N. |
| 2. October—2nd Saturday and Sunday ... | The Liberty Grand Prix. | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 3. June—2nd, 3rd, 4th or last Saturday and Sunday or August—1st Saturday and Sunday. | Thunder on the Narrows. | All waters of Prospect Bay enclosed by the following points: Latitude 38°57′52″ N., longitude 076°14′48″ W., thence to latitude 38°58′02″ N., longitude 076°15′05″ W., thence to latitude 38°57′38″ N., longitude 076°15′29″ W., thence to latitude 38°57′28″ N., longitude 076°15′23″ W., thence to point of origin at latitude 38°57′52″ N., longitude 076°14′48″ W. |
| 4. September—2nd, 3rd or 4th Friday, Saturday and Sunday. October—1st Friday, Saturday and Sunday. | Chesapeake Challenge/Solomons Offshore Grand Prix. | All waters of the Patuxent River, within boundary lines connecting the following positions; originating near north entrance of MD Route 4 bridge, latitude 38°19′45″ N., longitude 076°28′06″ W., thence southwest to south entrance of MD Route 4 bridge, latitude 38°19′24″ N., longitude 076°28′30″ W., thence south to a point near the shoreline, latitude 38°18′32″ N., longitude 076°28′14″ W., thence southeast to a point near the shoreline, latitude 38°17′38″ N., longitude 076°27′26″ W., thence northeast to latitude 38°18′00″ N., longitude 076°26′41″ W., thence northwest to latitude 38°18′59″ N., longitude 076°27′20″ W., located at Solomons, MD, thence continuing northwest and parallel to shoreline to point of origin. |
| 5. June—3rd, 4th or last Sunday ............ | Coastal Aquatics Swim Team Open Water Summer Shore Swim. | All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′00″ N., longitude 075°54′00″ W., thence westerly to latitude 38°18′00″ N., longitude 075°55′00″ W., thence northerly to latitude 38°20′00″ N., longitude 075°53′48″ W., thence easterly to latitude 38°19′42″ N., longitude 075°52′54″ W. |
| 6. June—1st Saturday and Sunday ......... | Carolina Cup Regatta. | The specified waters of Pasquotank River near Elizabeth City, NC. |
| 7. August—1st Friday, Saturday and Sunday. | SBIP—Fountain Powerboats Kilo Run and Super Boat Grand Prix. | The specified waters of the Pamlico River including Chocowinity Bay, NC. |
| 8. September—3rd and or 4th or last Sunday. | Crystal Coast Grand Prix. | The specified waters of Bogue Sound, adjacent to Morehead City, NC. |

This rule revises 18 preexisting special local regulations that involves change to marine event date(s) and/or coordinates. These events are listed in Table 3, with reference by section as printed in the Table to § 100.501.

TABLE 3

[Changes to special local regulation date(s) and coordinates]

| Table to § 100.501 section | Location | Revision (date/coordinates) |
|---|---|---|
| 1. (a.) 4 ............................................ | N. Atlantic Ocean, Atlantic City, NJ ...................................................... | coordinates. |
| 2. (a.) 6 ............................................ | N. Atlantic Ocean, Seaside Heights—Normandy Beach, NJ ............... | coordinates. |
| 3. (a.) 7 ............................................ | Manasquan River and N. Atlantic Ocean, Asbury Park—Seaside Park, NJ. | dates, coordinates. |
| 4. (a.) 8 ............................................ | N. Atlantic Ocean, Atlantic City, NJ ...................................................... | dates. |
| 5. (a.) 12 .......................................... | New Jersey Intracoastal Waterway, near Atlantic City, NJ .................. | dates. |
| 6. (b.) 1 ............................................ | Severn River, Annapolis, MD ............................................................... | coordinates. |
| 7. (b.) 2 ............................................ | Severn River, Annapolis, MD ............................................................... | dates. |
| 8. (b.) 7 ............................................ | Severn River, Annapolis, MD ............................................................... | coordinates. |
| 9. (b.) 10 .......................................... | Nanticoke River, Sharptown, MD .......................................................... | coordinates. |
| 10. (b.) 17 ........................................ | Spa Creek, Severn River, Annapolis, MD ............................................ | coordinates. |
| 11. (b.) 18 ........................................ | Patuxent River, Solomons, MD ............................................................. | dates. |
| 12. (b.) 19 ........................................ | N. Atlantic Ocean, Ocean City, MD ...................................................... | dates, coordinates. |
| 13. (b.) 20 ........................................ | N. Atlantic Ocean, Ocean City, MD ...................................................... | date, coordinates. |
| 14. (c.) 1 .......................................... | Sunset Creek, Hampton River, Hampton, VA ....................................... | dates. |
| 15. (c.) 4 .......................................... | Rappahannock River, Layton, VA ......................................................... | coordinates. |
| 16. (c.) 6 .......................................... | Mill Creek, Hampton, VA ...................................................................... | coordinates. |
| 17. (c.) 8 .......................................... | Back River, Poquoson, VA ................................................................... | dates, coordinates. |
| 18. (c.) 9 .......................................... | Mattaponi River, Wakema, VA ............................................................. | coordinates. |

Based on the nature of marine events, large number of participants and spectators, and event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or mariners traversing through the regulated area. In order to protect the safety of all waterway users including event participants and spectators, this rule establishes special local regulations for the time and location of each marine event.

This rule provides designated spectator areas for commercial small passenger vessels at certain marine event(s). The purpose of a commercial small passenger vessel spectator area is to ensure the safe operation of commercial vessels that carry a greater number of passengers onboard and operating within the widespread, high capacity spectator fleet at marine events. These spectator areas facilitate direct and unobstructed accesses for first responders should an emergency occur aboard one of the higher capacity commercial passenger vessels. Commercial passenger vessels holding a valid Certificate of Inspection issued under 46 CFR 114.110, and 175.110, (subchapter K or T vessels) are eligible for access to the designated spectator area as directed by the marine event Patrol Commander.

Owners or operators of vessels that meet the requirements of subchapter K or T vessels may request access to the Severn River spectator area for the U.S. Naval Academy Blue Angels Air Show by contacting the City of Annapolis Harbormaster Office, at telephone (410) 263–7973 or email at *harbormaster@annapolis.gov*. Application must be made no later than seven days prior to the date of the event. Applicants will be notified by the Captain of the Port or representative regarding status of applications generally the Friday before the date of the event.

Owners or operators of vessels that meet the requirements of subchapter K or T vessels may request access to the Patapsco River spectator area for the Baltimore Air Show by contacting Sail Baltimore at telephone (410) 522–7300 or email at *info@sailbaltimore.org*. Application must be made no later than ten days prior to the date of the event. Applicants will be notified by the Captain of the Port or representative regarding status of applications generally the Friday before the date of the event.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the Captain of the Port (COTP), or designated Coast Guard Patrol Commander. The designated "Patrol Commander" includes Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on their behalf. On-scene Patrol Commander may be augmented by local, State or Federal officials authorized to act in support of the Coast Guard.

### *Safety Zones*

This rule adds 4 new safety zones, and revises 22 previously established safety zones listed in the Table to § 165.506. Other than changes to the dates and locations of certain safety zones, the other provisions in 33 CFR 165.506 remain unchanged.

The Coast Guard revises the regulations at 33 CFR 165.506 by adding 4 new safety zone locations to the permanent regulations listed in this section. The new safety zones are listed in Table 4, including reference by section as printed in the Table to § 165.506.

TABLE 4

[Safety zones added to 33 CFR 165.506]

| Table to § 165.506 section | Location |
|---|---|
| 1. (a.) 17 | N. Atlantic Ocean, Sea Isle City, NJ. |
| 2. (a.) 18 | Rehoboth Bay, Dewey Beach, DE. |
| 3. (b.) 27 | Chester River, Kent Island Narrows, MD. |
| 4. (b.) 28 | Susquehanna River, Havre de Grace, MD. |

The rule revises 22 preexisting safety zones that involves change to event date(s) and coordinates. These revised safety zones are shown in Table 5, with reference by section as printed in the Table to § 165.506.

TABLE 5

[Changes to safety zone date(s) and coordinates]

| Table to § 165.506 section | Location | Revision (date/coordinates) |
|---|---|---|
| 1. (a.) 1 | N. Atlantic Ocean, Bethany Beach, DE | dates. |
| 2. (a.) 3 | N. Atlantic Ocean, Rehoboth Beach, DE | dates. |
| 3. (a.) 4 | N. Atlantic Ocean, Avalon, NJ | dates. |
| 4. (a.) 5 | Barnegat Bay, Barnegat Township, NJ | dates. |
| 5. (a.) 6 | N. Atlantic Ocean, Cape May, NJ | dates. |
| 6. (a.) 7 | Delaware Bay, North Cape May, NJ | dates. |
| 7. (a.) 8 | Great Egg Harbor Inlet, Margate City, NJ | dates. |
| 8. (a.) 9 | Metedeconk River, Brick Township, NJ | dates. |
| 9. (a.) 10 | N. Atlantic Ocean, Atlantic City, NJ | dates. |
| 10. (a.) 11 | N. Atlantic Ocean, Ocean City, NJ | dates. |
| 11. (a.) 13 | Little Egg Harbor, Parker Island, NJ | dates. |
| 12. (a.) 16 | Delaware River, Philadelphia, PA | dates. |
| 13. (b.) 2 | Severn River and Spa Creek, Annapolis, MD | coordinates. |
| 14. (b.) 4 | Upper Potomac River, Washington, DC | dates/coordinates. |
| 15. (b.) 5 | Northwest Harbor (East Channel), Patapsco River, MD | coordinates. |

TABLE 5—Continued

[Changes to safety zone date(s) and coordinates]

| Table to § 165.506 section | Location | Revision (date/coordinates) |
|---|---|---|
| 16. (b.) 12 | Potomac River, Fairview Beach, Charles County, MD | dates. |
| 17. (b.) 16 | Susquehanna River, Havre de Grace, MD | dates. |
| 18. (b.) 20 | Upper Potomac River, Washington, DC | dates. |
| 19. (b.) 22 | Potomac River, Prince William County, VA | dates/coordinates. |
| 20. (c.) 9 | North Atlantic Ocean, Virginia Beach, VA (safety zone A) | dates. |
| 21. (c.) 18 | Cape Charles Harbor, Cape Charles, VA | dates. |
| 22. (c.) 23 | Elizabeth River Eastern Branch, Norfolk, VA | dates. |

Each year, organizations in the Fifth Coast Guard District sponsor fireworks displays in the same general location and time period. Each event uses a barge or an on-shore site near the shoreline as the fireworks launch platform. A safety zone is used to control vessel movement within a specified distance surrounding the launch platforms to ensure the safety of persons and property. Coast Guard personnel on scene may allow boaters within the safety zone if conditions permit.

The enforcement period for these safety zones is from 5:30 p.m. to 1 a.m. local time. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the COTP or designated Coast Guard Patrol Commander on scene, as provided for in 33 CFR 165.23. This rule provides for the safety of life on navigable waters during the events. The regulatory text we are proposing appears at the end of this document.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the short amount of time that vessels will be restricted from regulated areas, and the small size of these areas that are usually positioned away from high vessel traffic zones. Generally vessels would not be precluded from getting underway, or mooring at any piers or marinas currently located in the vicinity of the regulated areas. Advance notifications would also be made to the local maritime community by issuance of Local Notice to Mariners, Broadcast Notice to Mariners, Marine information and facsimile broadcasts so mariners can adjust their plans accordingly. Notifications to the public for most events will typically be made by local newspapers, radio and TV stations. The Coast Guard anticipates that these special local regulated areas and safety zones will only be enforced one to three times per year.

### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas or safety zones may be small entities, for the reasons stated in section IV.A above this rule would not have a significant economic impact on any vessel owner or operator. However this rule will affect the following entities some of which may be small entities: The owners and operators of vessels intending to transit or anchor in these regulated areas during the times the zones are enforced.

These special local regulated areas and safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will ensure that small entities are able to operate in the areas where events are occurring to the extent possible while ensuring the safety of event participants and spectators. The enforcement period will be short in duration and, in many of the areas, vessels can transit safely around the regulated area. Generally, blanket permission to enter, remain in, or transit through these regulated areas will be given, except during the period that the Coast Guard patrol vessel is present. Before the enforcement period, we will issue maritime advisories widely.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### *C. Collection of Information*

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

This rule involves implementation of regulations within 33 CFR part 100 that apply to organized marine events on the navigable waters of the United States. Some marine events by their nature may introduce potential for adverse impact on the safety or other interest of waterway users or waterfront infrastructure within or close proximity to the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. This section of the rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are not required for this section of the rule.

This rule involves implementation of regulations at 33 CFR part 165 that establish safety zones on navigable waters of the United States for fireworks events. These safety zones are enforced for the duration of fireworks display events. The fireworks are generally launched from or immediately adjacent to navigable waters of the United States. The category of activities includes fireworks launched from barges or at the shoreline that generally rely on the use of navigable waters as a safety buffer. Fireworks displays may introduce potential hazards such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This section of the rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

### List of Subjects

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 100 and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. Revise section 100.501 to read as follows:

### § 100.501 Special Local Regulations; Marine Events within the Fifth Coast Guard District.

The regulations in this section apply to the marine events listed in the Table to § 100.501. These regulations will be effective annually, for the duration of each event listed in the Table to § 100.501. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(a) *Definitions.* The following definitions apply to this section:

(1) *Coast Guard Patrol Commander.* A Patrol Commander (PATCOM) is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector—Captain of the Port to enforce these regulations.

(2) *Official Patrol* means any vessel assigned or approved by the respective Captain of the Port with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(4) *Regulated area* as used in this section means an area where Special local regulations apply to a specific described waterway to include creeks, sounds, bays, rivers and oceans. Regulated areas include all waters of a specific body of water described with intent to define boundaries where Coast Guard enforces Special local regulations. Boundaries may be described from shoreline to shoreline, reference bridges or other fixed structures, by points and lines defined by latitude and longitude. All coordinates reference Datum: NAD 1983.

(b) *Marine Event Patrol.* The Coast Guard may assign a marine event patrol, as described in § 100.40 of this part, to each regulated event listed in the table. Additionally, a PATCOM may be assigned to oversee the patrol. The marine event patrol and PATCOM may be contacted on VHF–FM Channel 16. The PATCOM may terminate the event, or the operation of any vessel participating in the marine event, at any time if deemed necessary for the protection of life or property. Only designated marine event participants and their vessels and official patrol vessels are authorized to enter the regulated area.

(c) *Special local regulations*—(1) *Controls on vessel movement.* The PATCOM or designated marine event patrol may forbid and control the movement of all vessels in the regulated area(s). When hailed or signaled by an official patrol vessel, a vessel in these areas shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) *Directions, instructions, and minimum speed necessary.* The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(3) *Race Area.* This is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this part. Only event sponsor designated participants or designated participating vessels and official patrol vessels are allowed to enter the race area. Persons or vessel operators may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the PATCOM on VHF–FM Channel 16.

(4) *Spectator Area.* This is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part. Spectators are only allowed inside the regulated area if they remain within a designated spectator area. All spectator vessels shall be anchored or operate at a No Wake Speed within the designated spectator area. On scene designated PATCOM representatives will direct spectator vessels to the spectator area. Spectators may contact the PATCOM to request permission to pass through the regulated area. If permission is granted, spectators must pass directly through the regulated area at safe speed and without loitering.

(5) *Buffer Area.* This is a neutral zone that surrounds the perimeter of a Race Area or Marine Event Area within the regulated area described by this part. The purpose of a buffer zone is to minimize potential collision conflicts with marine event participants or race boats and spectator vessels or nearby transiting vessels. This zone provides separation between a Race Area or Marine Event Area and a specified Spectator Area or other vessels that are operating in the vicinity of the Special local regulated area for marine event.

(6) *Spectators.* Spectators are only allowed inside the regulated area if they remain within a designated spectator area. Spectators may contact the PATCOM to request permission to either enter the Spectator Area or pass through the regulated area. If permission is granted, spectators may enter the Spectator Area or must pass directly through the regulated area as instructed by PATCOM at safe speed and without loitering.

(d) *Contact information.* Questions about marine events should be addressed to the local Coast Guard Captain of the Port for the area in which the marine event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see subpart 3.25 of this chapter.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4940.

(2) Coast Guard Sector Maryland-National Capital Region—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone North Carolina: (877) 229–0770 or (910) 362–4015.

(e) *Application for marine events.* The application requirements of § 100.15 of this part apply to all marine events listed in the Table to § 100.501. For information on applying for a marine event permit, contact the Captain of the Port for the area in which the marine event will occur, at the phone numbers listed above.

(f) *Enforcement periods.* The enforcement periods for each of the Special local regulations listed in the Table to § 100.501 of this section are subject to change, but the duration of enforcement would remain the same or nearly the same total amount of time as stated in its table. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

(g) *Regulations for specific marine events*—(1) *Marine event (b.) 7, U.S. Naval Academy Blue Angels Air Show.* Severn River spectator area; except for a vessel in an emergency situation, a vessel may not anchor or maintain station within the spectator area described in TABLE TO 100.501 (b.) 7 without the permission of the Captain of the Port or designated PATCOM. The Captain of the Port has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR subchapters K and T (46 CFR 114.110, and 175.110). Vessels that meet the requirements of this section may request access to the Severn River spectator area by contacting the City of Annapolis Harbormaster at (410) 263–7973 or email *harbormaster@annapolis.gov* to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 7 calendar days prior to the event date. Applicants will be notified by the Captain of the Port or representative regarding status of applications and further instructions. All vessels shall contact the PATCOM on VHF–FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by the PATCOM when entering the regulated area. The regulations for this event will restrict access to the following Annapolis Harbor, MD, anchorage grounds listed in 33 CFR 110.159(a)(2) through (4): Middle Ground Anchorage, South Anchorage, and Naval Anchorage for Small Craft.

(2) *Marine event (b.) 23, Baltimore Air Show.* Patapsco River spectator area; except for a vessel in an emergency situation, a vessel may not anchor or hold station within the spectator area described in TABLE TO 100.501 (b.) 23 without the permission of the Captain of the Port or designated PATCOM. The Captain of the Port has designated this spectator area for commercial small passenger vessel use. This area is closed except for commercial small passenger vessels holding a valid Certificate of Inspection regulated under 46 CFR subchapters K and T (46 CFR 114.110, and 175.110). Vessels that meet the requirements of this section may request access to the Patapsco River spectator area by contacting the Sail Baltimore at (410) 522–7300 or email *info@sailbaltimore.org* to obtain a vessel spectator area application. Vessel spectator area applications shall be submitted no later than 10 calendar days prior to the event date. Applicants will be notified by the Captain of the Port or representative regarding status of applications and further instructions. All vessels shall contact the PATCOM on VHF–FM channels 16 or 22A prior to transiting to the spectator area to confirm entry approval. Vessels approved for spectator area access shall follow the instructions issued by the PATCOM when entering the regulated area. The regulations for this event will

restrict access to the following Baltimore Harbor, MD, anchorage grounds listed in 33 CFR 110.158(1)(1) through (4): Anchorage No. 1, general anchorage; Anchorage No. 2, general anchorage; Anchorage No. 3 Upper, general anchorage; and Anchorage No. 3 Lower, general anchorage.

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | **(a.) Coast Guard Sector Delaware Bay—COTP Zone** |
| 1 .......... | June—1st Sunday ..... | Atlantic County Day at the Bay. | Atlantic County, New Jersey. | The waters of Great Egg Harbor Bay, adjacent to Somers Point, New Jersey, bounded by a line drawn along the following boundaries: The area is bounded to the north by the shoreline along John F. Kennedy Park and Somers Point, New Jersey; bounded to the east by the State Route 52 bridge; bounded to the south by a line that runs along latitude 39°18′00″ N., and bounded to the west by a line that runs along longitude 074°37′00″ W. |
| 2 .......... | May—3rd Sunday; September—3rd Saturday. | Annual Escape from Fort Delaware Triathlon. | Escape from Fort Delaware Triathlon, Inc. | All waters of the Delaware River between Pea Patch Island and Delaware City, Delaware, bounded by a line connecting the following points: Latitude 39°36′35.7″ N., longitude 075°35′25.6″ W., thence southeast to latitude 39°34′57.3″ N., longitude 075°33′23.1″ W., thence southwest to latitude 39°34′11.9″ N., longitude 075°34′28.6″ W., thence northwest to latitude 39°35′52.4″ N., longitude 075°36′33.9″ W., thence to point of origin. |
| 3 .......... | June—last Saturday .. | Westville Parade of Lights. | Borough of Westville and Westville Power Boat. | All waters of Big Timber Creek in Westville, New Jersey from shoreline to shoreline bounded on the south from the Route 130 Bridge and to the north by the entrance of the Delaware River. |
| 4 .......... | June—4th Sunday .... | OPA Atlantic City Grand Prix. | Offshore Performance Assn. (OPA). | Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas:<br>Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′31″ N., longitude 074°24′45″ W., thence east to latitude 39°21′08″ N., longitude 074°24′32″ W., thence southwest to latitude 39°20′21.5″ N., longitude 074°27′04.6″ W., thence northwest to latitude 39°20′45.6″ N., longitude 074°27′11.6″ W., thence northeast parallel to shoreline to point of origin.<br>Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′46″ N., longitude 074°24′35″ W., thence east to latitude 39°21′06″ N., longitude 074°24′06″ W., thence southwest to latitude 39°20′06″ N., longitude 074°27′20″ W., thence northwest to latitude 39°20′40.6″ N., longitude 074°27′31.5″ W., thence northeast along the shoreline to point of origin.<br>Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°21′05.6″ N., longitude 074°24′05.8″ W., thence east to latitude 39°20′52.1″ N., longitude 074°23′53.9″ W., thence southeast to latitude 39°19′51.6″ N., longitude 074°27′16.2″ W., thence northwest to latitude 39°20′05.6″ N., longitude 074°27′20″ W., thence northeast to point of origin. |
| 5 .......... | July—on or about July 4th. | U.S. holiday celebrations. | City of Philadelphia ... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 6 .......... | August—2nd Friday, Saturday and Sunday.. | Point Pleasant OPA/NJ Offshore Grand Prix. | Offshore Performance Association (OPA) and New Jersey Offshore Racing Assn. | Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas:<br>Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°59′41″ N., longitude 074°03′20″ W., thence east to latitude 39°59′28″ N., longitude 074°02′15″ W., thence southwest to latitude 39°56′41″ N., longitude 074°02′55″ W., thence west to latitude 39°56′45″ N., longitude 074°03′52″ W., thence north parallel to shoreline to point of origin. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°00′00″ N., longitude 074°03′31″ W., thence east to latitude 39°59′41″ N., longitude 074°02′00″ W., thence southwest to latitude 39°56′28″ N., longitude 074°02′43″ W., thence west to latitude 39°56′31″ N., longitude 074°04′10″ W., thence north along the shoreline to point of origin.<br>Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 39°59′41″ N., longitude 074°01′59″ W., thence east to latitude 39°59′39″ N., longitude 074°01′48″ W., thence southwest to latitude 39°56′27″ N., longitude 074°02′29″ W., thence west to latitude 39°56′28″ N., longitude 074°02′43″ W., thence north to point of origin. |
| 7 .......... | May—3rd weekend, Saturday and Sunday. | New Jersey Offshore Grand Prix. | Offshore Performance Assn. & New Jersey Offshore Racing Assn. | Regulated enforcement area—All waters of the North Atlantic Ocean encompassed within the following areas:<br>Race area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′40″ N., longitude 074°01′59″ W., thence southeast to latitude 40°05′34″ N., longitude 074°01′40″ W., thence south to latitude 40°03′54″ N., longitude 074°02′07″ W., thence west to latitude 40°03′56″ N., longitude 074°02′24″ W., thence north and parallel to shoreline to point of origin.<br>Buffer area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′55″ N., longitude 074°02′02″ W., thence southeast to latitude 40°05′44″ N., longitude 074°01′28″ W., thence south to latitude 40°03′42″ N., longitude 074°02′01″ W., thence west to latitude 40°03′44″ N., longitude 074°02′36″ W., thence north along the shoreline to point of origin.<br>Spectator area: All waters of the North Atlantic Ocean bounded by a line connecting the following points: Latitude 40°05′44″ N., longitude 074°01′27″ W., thence east to latitude 40°05′42″ N., longitude 074°01′20″ W., thence southwest to latitude 40°03′42″ N., longitude 074°01′55″ W., thence west to latitude 40°03′42″ N., longitude 074°02′01″ W., thence north to point of origin. |
| 8 .......... | August—3rd Tuesday and Wednesday. | Thunder Over the Boardwalk Air show. | Atlantic City Chamber of Commerce. | The waters of the North Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: From a point along the shoreline at latitude 39°21′31″ N., longitude 074°25′04″ W., thence southeasterly to latitude 39°21′08″ N., longitude 074°24′48″ W., thence southwesterly to latitude 39°20′16″ N., longitude 074°27′17″ W., thence northwesterly to a point along the shoreline at latitude 39°20′44″ N., longitude 074°27′31″ W., thence northeasterly along the shoreline to latitude 39°21′31″ N., longitude 074°25′04″ W. |
| 9 .......... | October—1st Monday (Columbus Day). | U.S. holiday celebrations. | City of Philadelphia ... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 10 ......... | December 31st (New Year's Eve). | U.S. holiday celebrations. | City of Philadelphia ... | The waters of the Delaware River, adjacent to Philadelphia, PA and Camden, NJ, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and bounded on the north by the Benjamin Franklin Bridge. |
| 11 ......... | September—2nd, 3rd or 4th Sunday. | Ocean City Air Show | Ocean City, NJ .......... | All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points: Latitude 39°15′57″ N., longitude 074°35′09″ W., thence northeast to latitude 39°16′34″ N., longitude 074°33′54″ W., thence southeast to latitude 39°16′17″ N., longitude 074°33′29″ W., thence southwest to latitude 39°15′40″ N., longitude 074°34′46″ W., thence northwest to point of origin, near Ocean City, NJ. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| 12 ......... | June—4th Sunday and August 2nd or 3rd Sunday. September—2nd or 3rd Saturday and Sunday. | Atlantic City International Triathlon. | Atlantic City, NJ ........ | All waters of the New Jersey Intracoastal Waterway (ICW) bounded by a line connecting the following points: Latitude 39°21′20″ N., longitude 074°27′18″ W., thence northeast to latitude 39°21′27.47″ N., longitude 074°27′10.31″ W., thence northeast to latitude 39°21′33″ N., longitude 074°26′57″ W., thence northwest to latitude 39°21′37″ N., longitude 074°27′03″ W., thence southwest to latitude 39°21′29.88″ N., longitude 074°27′14.31″ W., thence south to latitude 39°21′19″ N., longitude 074°27′22″ W., thence east to latitude 39°21′18.14″ N., longitude 074°27′19.25″ W., thence north to point of origin, near Atlantic City, NJ. |
| | | **(b.) Coast Guard Sector Maryland-National Capital Region—COTP Zone** | | |
| 1 .......... | March—4th or last Saturday; or April—1st Saturday. | USNA Safety at Sea Seminar. | U.S. Naval Academy | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by the Naval Academy (SR–450) Bridge and bounded to the southeast by a line drawn from Triton Light at latitude 38°58′53.0″ N., longitude 076°28′34.4″ W., thence easterly to Carr Point, MD at latitude 38°58′58.7″ N., longitude 076°27′38.9″ W. |
| 2 .......... | April and May—every Friday, Saturday and Sunday. | USNA Crew Races ... | U.S. Naval Academy | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn from the south shoreline at latitude 39°00′58″ N., longitude 076°31′32″ W., thence to the north shoreline at latitude 39°01′11″ N., longitude 076°31′10″ W. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W., thence easterly to Carr Point, MD at latitude 38°58′58″ N., longitude 076°27′41″ W. |
| 3 .......... | July—3rd, 4th or last Saturday, or Sunday. | Middle River Dinghy Poker Run. | Norris Trust Foundation. | The waters of Middle River, from shoreline to shoreline, within an area bounded to the north by a line drawn along latitude 39°19′33″ N., and bounded to the south by a line drawn from latitude 39°17′24.4″ N., longitude 076°23′53.3″ W., thence east to latitude 39°18′06.4″ N., longitude 076°23′10.9″ W., including all western tributaries that join Middle River, including Dark Head Creek, Hopkins Creek, Norman Creek, Hogpen Creek and Sue Creek, located in Baltimore County, at Essex, MD. |
| 4 .......... | May—1st Sunday ...... | Nanticoke River Swim and Triathlon. | Nanticoke River Swim and Triathlon, Inc. | All waters of the Nanticoke River, including Bivalve Channel and Bivalve Harbor, bounded by a line drawn from a point on the shoreline at latitude 38°18′38.8″ N., longitude 075°53′31.8″ W., thence westerly to latitude 38°18′39.8″ N., longitude 075°55′00″ W., thence northeasterly to latitude 38°19′57.7″ N., longitude 075°53′47.7″ W., thence easterly to latitude 38°19′42.3″ N., longitude 075°52′59.4″ W. |
| 5 .......... | May— the Saturday before Memorial Day. | Chestertown Tea Party Re-enactment. | Chestertown Tea Party Festival. | All waters of the Chester River, within a line connecting the following positions: Latitude 39°12′27″ N., longitude 076°03′46″ W., thence to latitude 39°12′19″ N., longitude 076°03′53″ W., thence to latitude 39°12′15″ N., longitude 076°03′41″ W., thence to latitude 39°12′26″ N., longitude 076°03′38″ W., thence to the point of origin at latitude 39°12′27″ N., longitude 076°03′46″ W., located at Chestertown, MD. |
| 6 .......... | May—3rd Friday, Saturday and Sunday. June 2nd or 3rd Friday, Saturday and Sunday. | Washington, DC Dragon Boat Festival. | Washington, DC Dragon Boat Festival, Inc. | The waters of the Upper Potomac River, Washington, DC, from shoreline to shoreline, bounded upstream by the Francis Scott Key Bridge and downstream by the Roosevelt Memorial Bridge, located at Georgetown, Washington, DC. |
| 7 .......... | May—Tuesday and Wednesday before Memorial Day (observed). | USNA Blue Angels Air Show. | U.S. Naval Academy | All waters of the Severn River from shoreline to shoreline, bounded to the northwest by a line drawn along the U.S. 50 fixed highway bridge. The regulated area is bounded to the southeast by a line drawn from U.S. Naval Academy Light at latitude 38°58′39.5″ N., longitude 076°28′49″ W., thence southeast to a point 1500 yards ESE of Chinks Point, MD at latitude 38°57′41″ N., longitude 076°27′36″ W., thence northeast to Greenbury Point at latitude 38°58′27.7″ N., longitude 076°27′16.4″ W. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | Spectator area: All waters of the Severn River bounded by a line commencing at latitude 38°58′38.2″ N., longitude 076°27′56.9″ W., thence southeast to latitude 38°58′24.9″ N., longitude 076°27′47.6″ W., thence west to latitude 38°58′22.3″ N., longitude 076°27′54.5″ W., thence northwest to latitude 38°58′28.3″ N., longitude 076°28′11″ W., thence east to point of origin. This area is located generally in the center portion of Middle Ground Anchorage, Severn River, MD. This spectator area is restricted to certain vessels as described in § 100.501 paragraph (g)(1). |
| 8 .......... | June—2nd Sunday ... | The Great Chesapeake Bay Swim. | The Great Chesapeake Bay Swim, Inc. | The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00′36.6″ N., longitude 076°23′55″ W., thence eastward to the eastern shoreline at latitude 38°59′14.2″ N., longitude 076°19′57.3″ W.; and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00′18.4″ N., longitude 076°24′28.2″ W., thence eastward to the eastern shoreline at latitude 38°58′39.2″ N., longitude 076°20′8.8″ W. |
| 9 .......... | June—3rd, 4th or last Saturday or July—2nd or 3rd Saturday. | Maryland Swim for Life. | District of Columbia Aquatics Club. | The waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn along latitude 39°10′16″ N., near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°12′30″ N., parallel with Maryland S.R. 213 Highway Bridge. |
| 10 ......... | June—last Saturday and Sunday or July—2nd Saturday and Sunday. | Bo Bowman Memorial—Sharptown Regatta. | Carolina Virginia Racing Assn. | Regulated enforcement area—All waters of the Nanticoke River encompassed within the following areas:<br>Race area: All waters of the Nanticoke River commencing at a point at latitude 38°33′02″ N., longitude 075°42′44″ W., thence northwest to latitude 38°33′03″ N., longitude 075°42′45″ W., thence southwest to latitude 38°32′46″ N., longitude 075°43′08″ W., thence southeast to latitude 38°32′45″ N., longitude 075°43′07″ W., thence northeast to the point of origin.<br>Race boat/participant access area: Located southwest and down river from the race area. From shoreline to shoreline and bound by a line commencing at latitude 38°32′37″ N., longitude 075°43′14″ W., thence northwest across the river to latitude 38°32′41.5″ N., longitude 075°43′19.3″ W., thence northeast to latitude 38°32′46″ N., longitude 075°43′14″ W., thence southeast along the Route 313 bridge to latitude 38°32′41.7″ N., longitude 075°43′08.2″ W., thence southwest to point of origin.<br>Buffer area: All waters of the Nanticoke River bounded by a line connecting the following points: Commencing at latitude 38°33′02″ N., longitude 075°42′39″ W., thence southwest to latitude 38°32′42″ N., longitude 075°43′07″ W., thence northwest to latitude 38°32′47″ N., longitude 075°43′13″ W., thence northeast to latitude 38°33′07.5″ N., longitude 75°42′46″ W., thence southwest to the point of origin.<br>Spectator area: All waters of the Nanticoke River bounded by the following points: Located northeast and up-river from the race area. From shoreline to shoreline and bound by a line commencing at latitude 38°33′08.5″ N., longitude 075°42′33.6″ W., thence southeasterly along the shoreline to latitude 38°33′02″ N., longitude 075°42′39″ W., thence across the river northwest to latitude 38°33′07.4″ N., longitude 075°42′46″ W., thence northeast along the shoreline to latitude 38°33′13″ N., longitude 075°42′41.5″ W., thence southeast across the river to point of origin. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| 11 ......... | May/June—Saturday and Sunday after Memorial Day (observed); and October—1st Saturday and Sunday. | Rock Hall and Waterman's Triathlon Swims. | Kinetic Endeavors, LLC. | The waters of Rock Hall Harbor from shoreline to shoreline, bounded by a line drawn from latitude 39°07′58.9″ N., longitude 076°15′02″ W., thence southeast and parallel along the harbor breakwall to latitude 39°07′50.1″ N., longitude 076°14′41.7″ W., located at Rock Hall, MD. |
| 12 ......... | September—2nd Saturday or the Saturday after Labor Day. (biennial, even years). | Catholic Charities Dragon Boat Races. | Associated Catholic Charities, Inc. | The waters of the Patapsco River, within the Inner Harbor, from shoreline to shoreline, bounded on the east by a line drawn along longitude 076°36′30″ W., located at Baltimore, MD. |
| 13 ......... | June—3rd, 4th or last Saturday or Sunday. | Baltimore Dragon Boat Challenge. | Baltimore Dragon Boat Club. | The waters of Patapsco River, Northwest Harbor, in Baltimore, MD, from shoreline to shoreline, within an area bounded on the east by a line drawn along longitude 076°35′00″ W. and bounded on the west by a line drawn along longitude 076°36′42″ W. |
| 14 ......... | May—2nd, 3rd, 4th or last Saturday or Sunday. June—1st, 2nd or 3rd Saturday or Sunday. | Oxford-Bellevue Sharkfest Swim. | Enviro-Sports Productions Inc. | The waters of the Tred Avon River from shoreline to shoreline, within an area bounded on the east by a line drawn from latitude 38°42′25″ N., longitude 076°10′45″ W., thence south to latitude 38°41′37″ N., longitude 076°10′26″ W., and bounded on the west by a line drawn from latitude 38°41′58″ N., longitude 076°11′04″ W., thence south to latitude 38°41′25″ N., longitude 076°10′49″ W., thence east to latitude 38°41′25″ N., longitude 076°10′30″ W., located at Oxford, MD. |
| 15 ......... | June—1st Sunday ..... | Washington's Crossing: Swim Across the Potomac. | Wave One Swimming | The waters of the Potomac River, from shoreline to shoreline, bounded to the north by a line drawn that originates at Jones Point Park, VA at the west shoreline latitude 38°47′35″ N., longitude 077°02′22″ W., thence east to latitude 38°47′12″ N., longitude 077°00′58″ W., at east shoreline near National Harbor, MD. The regulated area is bounded to the south by a line drawn originating at George Washington Memorial Parkway highway overpass and Cameron Run, west shoreline latitude 38°47′23″ N., longitude 077°03′03″ W., thence east to latitude 38°46′52″ N., longitude 077°01′13″ W., at east shoreline near National Harbor, MD. |
| 16 ......... | October—last Saturday; or November—1st or 2nd Saturday. | The MRE Tug of War | Maritime Republic of Eastport. | The waters of Spa Creek from shoreline to shoreline, extending 400 feet from either side of a rope spanning Spa Creek from a position at latitude 38°58′36″ N., longitude 076°29′04.7″ W. at Annapolis City Dock, thence to a position at latitude 38°58′25″ N., longitude 076°28′52.4″ W., at Eastport, MD shoreline, near the foot of 2nd Street. |
| 17 ......... | December—2nd Saturday or Sunday. | Eastport Yacht Club Lights Parade. | Eastport Yacht Club .. | All waters of Spa Creek and the Severn River, shoreline to shoreline, bounded on the east by a line drawn from Triton Light, at latitude 38°58′53.1″ N., longitude 076°28′34.3″ W., thence southwest to Horn Point, at 38°58′20.9″ N., longitude 076°28′27.1″ W., and bounded on the west by a line drawn along 076°30′00″ W., that crosses the western end of Spa Creek, at Annapolis, MD. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| 18 ......... | Memorial Day weekend—Thursday, Friday, Saturday and Sunday; or Labor Day weekend—Thursday, Friday, Saturday and Sunday; or October—last Thursday, Friday, Saturday and Sunday. | NAS Patuxent River Air Expo. | NAS Patuxent River .. | All waters of lower Patuxent River, near Solomons, Maryland, located between Fishing Point and base of break wall marking the entrance to East Seaplane Basin at Naval Air Station Patuxent River (adjacent to approach for runway 14), within an area bounded by a line commencing near the shoreline at latitude 38°17′39″ N., longitude 076°25′47″ W., thence northwest to latitude 38°17′47″ N., longitude 076°26′00″ W., thence northeast to latitude 38°18′09″ N., longitude 076°25′40″ W., thence southeast to latitude 38°18′00″ N., longitude 076°25′25″ W., located near the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All waters of Chesapeake Bay, located approximately 500 yards north of break wall marking entrance to Chesapeake Bay Basin, Naval Air Station Patuxent River (adjacent to approach for runway 32), within an area bounded by a line commencing near the shoreline at latitude 38°16′53.9″ N., longitude 076°23′29.2″ W., thence southeast to latitude 38°16′40″ N., longitude 076°23′05″ W., thence southwest to latitude 38°16′19″ N., longitude 076°23′25″ W., thence northwest to latitude 38°16′30.4″ N., longitude 076°23′44.9″ W., located near the shoreline at U.S. Naval Air Station Patuxent River, Maryland. All waters of lower Patuxent River, near Solomons, Maryland, located between Hog Point and Cedar Point, located approximately 200 yards north of shoreline at Naval Air Station Patuxent River, Maryland. The area is bound by a line drawn from point commencing at latitude 38°18′41″ N., longitude 076°23′43″ W., thence east to latitude 38°18′16″ N., longitude 076°22′35″ W., thence south to latitude 38°18′12″ N., longitude 076°22′37″ W., thence northwest to latitude 38°18′36″ N., longitude 076°23′46″ W., thence to point of origin. |
| 19 ......... | May—1st or 2nd Saturday and Sunday; October—1st or 2nd Saturday and Sunday. | Ocean City Maryland Offshore Grand Prix. | Offshore Performance Assn. Racing, LLC. | Regulated enforcement area: All waters of North Atlantic Ocean bounded within the following designated areas.<br>Race area: All waters of North Atlantic Ocean commencing at latitude 38°20′06.33″ N., longitude 075°04′39.09″ W., thence east to latitude 38°20′03.75″ N., longitude 075°04′27.46″ W., thence north and parallel to Ocean City shoreline to latitude 38°21′32″ N., longitude 075°03′46.57″ W., thence west to shoreline at latitude 38°21′34.58″ N., longitude 075°04′00.95″ W., thence south to the point of origin.<br>Buffer area: 500 yards in all directions surrounding the "Race area". All waters of North Atlantic Ocean commencing at a point near the shoreline at latitude 38°21′52″ N., longitude 075°04′09″ W., thence east to latitude 38°21′44″ N., longitude 075°03′21″ W., thence southwest and parallel to Ocean City shoreline latitude 38°19′47″ N., longitude 075°04′15″ W., thence west to the shoreline at latitude 38°19′55″ N., longitude 075°04′57″ W.<br>Spectator area: Vessel operation restricted to operate at No Wake Speed. All waters of North Atlantic Ocean commencing at latitude 38°20′01″ N., longitude 075°04′08.4″ W., thence east to latitude 38°19′58″ N., longitude 075°03′57″ W., thence north and parallel to Ocean City shoreline to latitude 38°21′26″ N., longitude 075°03′16″ W., thence west to shoreline at latitude 38°21′29″ N., longitude 075°03′27.8″ W., thence south to the point of origin. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s)[1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| 20 ......... | June—1st, 2nd or 3rd Thursday, Friday, Saturday and Sunday. | Ocean City Air Show | Town of Ocean City, Maryland. | All waters of the North Atlantic Ocean within an area bounded by the following coordinates: Commencing at a point near the shoreline in vicinity of 33rd Street, Ocean City, MD, latitude 38°21′48.8″ N., longitude 075°04′10″ W., thence eastward to latitude 38°21′32″ N., longitude 075°03′12″ W., thence south to latitude 38°19′22.7″ N., longitude 075°04′09.5″ W., thence west to latitude 38°19′38.5″ N., longitude 075°05′05.4″ W., thence north along the shoreline to point of origin, located adjacent to Ocean City, MD. |
| 21 ......... | Memorial Day weekend (Saturday and Sunday). July—last Saturday or Sunday. | Cambridge Classic Powerboat Race. | Cambridge Power Boat Regatta Association. | Regulated enforcement area: All waters within Hambrooks Bay and Choptank River west and south of a line commencing at Great Marsh Point, latitude 38°35′06″ N., longitude 076°04′40.5″ W., thence northeast to latitude 38°35′22.7″ N., longitude 076°04′23.7″ W., thence northwest to latitude 38°35′42.2″ N., longitude 076°04′51.1″ W. at Hambrooks Bar Light LLNR 24995, thence southwest to latitude 38°35′34.2″ N., longitude 076°05′12.3″ W., terminating at the Hambrooks Bay breakwall as it intersects the shoreline.<br>Race area: Located within the waters of Hambrooks Bay and Choptank River, in an area bound to the north by the Hambrooks Bay breakwall and bounded to the east by a line drawn along longitude 076°04′42″ W. The actual placement of the Race Area will be determined by the marine event sponsor within the designated boundaries described in this section.<br>Buffer area: All waters within Hambrooks Bay and Choptank River (with the exception of the Race Area designated by the marine event sponsor) bound to the north by the breakwall and continuing along a line drawn from the east end of breakwall located at latitude 38°35′27.6″ N., longitude 076°04′50.1″ W., thence east to latitude 38°35′22.7″ N., longitude 076°04′23.7″ W., thence southwest to Great Marsh Point located at latitude 38°35′06″ N., longitude 076°04′40.6″ W.<br>Spectator area: All waters of the Choptank River, eastward and outside of Hambrooks Bay breakwall, thence bound by line that commences at latitude 38°35′25″ N., longitude 076°04′51″ W., thence east to latitude 38°35′22″ N., longitude 076°04′36″ W., thence southeast to latitude 38°35′19″ N. longitude 076°04′33″ W., thence northeast to latitude 38°35′22.7″ N. longitude 076°04′23.7″ W. |
| 22 ......... | July—4th or last Saturday and Sunday. | Southern Maryland Boat Club Summer Regatta. | Southern Maryland Boat Club. | All waters of Breton Bay, immediately adjacent to Leonardtown, MD shoreline, from shoreline to shoreline, within an area bounded to the east by a line drawn along latitude 38°16′43″ N., and bounded to the west by a line drawn along longitude 076°38′29.5″ W., located at Leonardtown, MD.<br>Race area: The race area is rectangular in shape measuring approximately 200 yards by 870 yards. The area is bounded by a line commencing at position latitude 38°17′07.2″ N., longitude 076°38′17.3″ W., thence southeast to latitude 38°16′55.3″ N., longitude 076°37′48″ W., thence southwest to latitude 38°16′50.1″ N., longitude 076°37′51.3″ W., thence northwest to latitude 38°17′01.9″ N., longitude 076°38′21″ W., thence northeast to point of origin.<br>Buffer area: The area surrounds the entire race area described in the preceding paragraph of this section. This area is rectangular in shape and provides a buffer of approximately 125 yards around the perimeter of the race area. The area is bounded by a line commencing at position latitude 38°17′12″ N., longitude 076°38′19.6″ W., thence southeast to latitude 38°16′57″ N., longitude 076°37′40.5″ W., thence southwest to latitude 38°16′44.8″ N., longitude 076°37′48.2″ W., thence northwest to latitude 38°17′00.2″ N., longitude 076°38′27.8″ W., thence northeast to point of origin. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | Spectator area: A. The area is bounded by a line commencing at position latitude 38°16′52.1″ N., longitude 076°38′14.2″ W., thence northeast to latitude 38°16′54″ N., longitude 076°38′12.5″ W., thence southeast to latitude 38°16′48.6″ N., longitude 076°37′59.3″ W., thence southwest to latitude 38°16′47.4″ N., longitude 076°37′59.3″ W., thence northwest along the shoreline to point of origin.<br>B. The area is bounded by a line commencing at position latitude 38°16′59.1″ N., longitude 076°37′45.6″ W., thence southeast to latitude 38°16′57.1″ N., longitude 076°37′40.2″ W., thence southwest to latitude 38°16′54.3″ N., longitude 076°37′41.9″ W., thence southeast to latitude 38°16′51.8″ N., longitude 076°37′36.4″ W., thence northeast to latitude 38°16′55.2″ N., longitude 076°37′34.2″ W., thence northwest to latitude 38°16′59.2″ N., longitude 076°37′37.2″ W., thence west to latitude 38°17′01.7″ N., longitude 076°37′43.7″ W., thence south to point of origin.<br>C. The area is bounded by a line commencing at position latitude 38°16′47.2″ N., longitude 076°37′54.8″ W., thence south to latitude 38°16′43.3″ N., longitude 076°37′55.2″ W., thence east to latitude 38°16′43.2″ N., longitude 076°37′47.8″ W., thence north to latitude 38°16′44.7″ N., longitude 076°37′48.5″ W., thence northwest to point of origin. |
| 23 ......... | October —Thursday, Friday, Saturday and Sunday after Columbus Day (observed). (biennial, even years). | Baltimore Air Show ... | Historic Ships in Baltimore, Inc. | Regulated area: All waters of the Patapsco River, within an area bounded by a line connecting position latitude 39°16′00″ N., longitude 076°36′30″ W., thence east to latitude 39°16′00″ N., longitude 076°33′00″ W., thence south to latitude 39°14′30″ N., longitude 076°33′00″ W., thence west to latitude 39°14′30″ N., longitude 076°36′30″ W., thence north to point of origin, located between Port Covington and Seagirt Marine Terminal, Baltimore, MD.<br>Spectator Area: All waters of Patapsco River located between the northern boundary defined by a line drawn from the vicinity of North Locust Point Marine Terminal, Pier 1 thence east to Canton Industrial area, Pier 5; the south boundary is defined by a line drawn from vicinity of Whetstone Point thence east to Lazaretto Point. This area is located generally where Northwest Harbor, East Channel joins Patapsco River, Fort McHenry Channel, near Fort McHenry National Monument, Baltimore, MD. This area is bound by a line to the north commencing at position latitude 39°16′01″ N., longitude 076°34′46″ W., thence east to latitude 39°16′01″ N., longitude 076°34′09″ W., and bound by a line to the south commencing at position latitude 39°15′39″ N., longitude 076°35′23″ W., thence east to latitude 39°15′26″ N., longitude 076°34′03″ W. This spectator area is restricted to certain vessels as described in § 100.501 paragraph (g)(2). |
| **(c.) Coast Guard Sector Hampton Roads—COTP Zone** | | | | |
| 1 ........... | May—last Friday, Saturday and Sunday and/or June—1st Friday, Saturday and Sunday.<br>October—3rd and 4th weekend. | Blackbeard Festival, Battle of Hampton. | City of Hampton ........ | The waters of Sunset Creek and Hampton River shoreline to shoreline bounded to the north by the I–64 Bridge over the Hampton River and bounded to the south by a line drawn from Hampton River Channel Light 16 (LL 10945), located at latitude 37°01′03″ N., longitude 076°20′24″ W., thence west across the Hampton River to finger pier at Bluewater Yacht Center, located at latitude 37°01′03″ N., longitude 076°20′28″ W. |

### TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | Spectator Vessel Anchorage Areas—Area A: Located in the upper reaches of the Hampton River, bounded to the south by a line drawn from the western shoreline at latitude 37°01′46.6″ N., longitude 076°20′21.3″ W., thence east across the river to latitude 37°01′42.6″ N., longitude 076°20′12.3″ W., and bounded to the north by the I–64 Bridge over the Hampton River. The anchorage area will be marked by orange buoys.<br>Area B: Located along the eastern side of the Hampton River channel, south of the route 60/143 bridge and Joy's Marina, and adjacent to the shoreline that fronts the Riverside Health Center. Bounded by the shoreline and a line drawn between the following points: Latitude 37°01′27.6″ N., longitude 076°20′23.1″ W., thence south to latitude 37°01′22.9″ N., longitude 076°20′26.1″ W. The anchorage area will be marked by orange buoys. |
| 2 .......... | June—1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday. | Norfolk Harborfest ..... | Norfolk Festevents, Ltd. | The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the north corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.6″ N., longitude 076°18′07.9″ W., and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.3″ N., longitude 076°17′51″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.9″ N., longitude 076°18′07.7″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′33.6″ N., longitude 076°17′54.1″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′13.2″ N., longitude 076°17′44.8″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.8″ N., longitude 076°17′37.5″ W.; and to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W. |
| 3 .......... | June—2nd or 3rd Saturday. | Cock Island Race ...... | Portsmouth Boat Club & City of Portsmouth, VA. | The waters of the Elizabeth River and its branches from shoreline to shoreline, bounded to the northwest by a line drawn across the Port Norfolk Reach section of the Elizabeth River between the northern corner of the landing at Hospital Point, Portsmouth, Virginia, latitude 36°50′51.6″ N., longitude 076°18′07.9″ W. and the north corner of the City of Norfolk Mooring Pier at the foot of Brooks Avenue located at latitude 36°51′00.3″ N., longitude 076°17′51″ W.; bounded on the southwest by a line drawn from the southern corner of the landing at Hospital Point, Portsmouth, Virginia, at latitude 36°50′50.9″ N., longitude 076°18′07.7″ W., to the northern end of the eastern most pier at the Tidewater Yacht Agency Marina, located at latitude 36°50′33.6″ N., longitude 076°17′54.1″ W.; bounded to the south by a line drawn across the Lower Reach of the Southern Branch of the Elizabeth River, between the Portsmouth Lightship Museum located at the foot of London Boulevard, in Portsmouth, Virginia at latitude 36°50′13.2″ N., longitude 076°17′44.8″ W., and the northwest corner of the Norfolk Shipbuilding & Drydock, Berkley Plant, Pier No. 1, located at latitude 36°50′08.8″ N., longitude 076°17′37.5″ W.; and bounded to the southeast by the Berkley Bridge which crosses the Eastern Branch of the Elizabeth River between Berkley at latitude 36°50′21.5″ N., longitude 076°17′14.5″ W., and Norfolk at latitude 36°50′35″ N., longitude 076°17′10″ W. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| 4 | June—last Saturday or July—1st Saturday. | RRBA Spring Radar Shootout. | Rappahannock River Boaters Association (RRBA). | All waters of Rappahannock River, adjacent to Layton, VA, from shoreline to shoreline, bounded on the west by a line running along longitude 076°58′30″ W., and bounded on the east by a line running along longitude 076°56′00″ W.<br>Buffer area: The waters of Rappahannock River extending 200 yards outwards from east and west boundary lines described in this section.<br>Spectator area: The regulated area cannot accommodate spectator vessels due to limitations posed by shallow water and insufficient waters to provide adequate separation between race course and other vessels. Spectators are encouraged to view the race from points along the adjacent shoreline. |
| 5 | July—last Wednesday and following Friday; or August—1st Wednesday and following Friday. | Pony Penning Swim | Chincoteague Volunteer Fire Department. | The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ N., longitude 075°22′40″ W., thence south to latitude 37°54′50″ N., longitude 075°22′46″ W.; and to the southwest by a line drawn from latitude 37°54′54″ N., longitude 075°23′00″ W., thence east to latitude 37°54′49″ N., longitude 075°22′49″ W. |
| 6 | August 1st or 2nd Friday, Saturday and Sunday. | Hampton Cup Regatta. | Hampton Cup Regatta Boat Club. | Regulated enforcement area—All waters of Mill Creek, adjacent and north of Fort Monroe, Hampton, Virginia. The regulated area includes the following areas:<br>Race area: All waters within the following boundaries: to the north, a line drawn along latitude 37°01′03″ N., to the east a line drawn along longitude 076°18′30″ W., to the south a line drawn parallel with the Fort Monroe shoreline, and west boundary is parallel with the Route 258—East Mercury Boulevard Bridge-causeway.<br>Buffer area A: All waters bounded by a line connecting the following points: latitude 37°00′43″ N., longitude 076°18′54″ W., thence north along the causeway to latitude 37°01′03″ N., longitude 076°18′52″ W., thence southwest to latitude 37°01′00″ N., longitude 076°18′54″ W., thence south to Route 143 causeway at latitude 37°00′44″ N., longitude 076°18′58″ W., thence east along the shoreline to point of origin.<br>Buffer area B: All waters bounded by a line connecting the following points: Latitude 37°01′08″ N., longitude 076°18′49″ W., thence east to latitude 37°01′08″ N., longitude 076°18′23″ W., thence south to latitude 37°00′33″ N., longitude 076°18′23″ W., thence west to latitude 37°00′33″ N., longitude 076°18′30″ W., thence north to latitude 37°01′03″ N., longitude 076°18′30″ W., thence west to latitude 37°01′03″ N., longitude 076°18′49″ W., thence north to point of origin.<br>Spectator area: All waters bounded by a line connecting the following points: Latitude 37°01′08″ N., longitude 076°18′23″ W., thence east to latitude 37°01′08″ N., longitude 076°18′14″ W., thence south to latitude 37°00′54″ N., longitude 076°18′14″ W., thence southwest to latitude 37°00′37″ N., longitude 076°18′23″ W., thence north to point of origin. |
| 7 | September 1st Friday, Saturday and Sunday or 2nd Friday, Saturday and Sunday. | Hampton Virginia Bay Days Festival. | Hampton Bay Days Inc. | The waters of Sunset Creek and Hampton River shoreline to shoreline bounded to the north by the I–64 Bridge over the Hampton River and bounded to the south by a line drawn from Hampton River Channel Light 16 (LL 10945), located at latitude 37°01′03″ N., longitude 076°20′24″ W., thence west to the finger pier across the river at Bluewater Yacht Center, located at latitude 37°01′03″ N., longitude 076°20′28″ W. |
| 8 | September—last Sunday or October—1st or 2nd Sunday. | Poquoson Seafood Festival Workboat Races. | City of Poquoson | The waters of the Back River, Poquoson, Virginia. |

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

| No. | Enforcement period(s) [1] | Event | Sponsor | Location/Special local regulation area |
|---|---|---|---|---|
| | | | | Race area: The area is bounded on the north by a line drawn along latitude 37°06′30″ N., bounded on the south by a line drawn along latitude 37°06′15″ N., bounded on the east by a line drawn along longitude 076°18′52″ W. and bounded on the west by a line drawn along longitude 076°19′30″ W.<br>Buffer area: The waters of Back River extending 200 yards outwards from east and west boundary lines, and 100 yards outwards from the north and south boundary lines described in this section.<br>Spectator area: Is located along the south boundary line of the buffer area described in this section and continues to the south for 300 yards. |
| 9 .......... | June—3rd Saturday and Sunday or 4th Saturday and Sunday. | Mattaponi Drag Boat Race. | Mattaponi Volunteer Rescue Squad and Dive Team. | All waters of Mattaponi River immediately adjacent to Rainbow Acres Campground, King and Queen County, Virginia. The regulated area includes a section of the Mattaponi River approximately three-quarter mile long and bounded in width by each shoreline, bounded to the east by a line that runs parallel along longitude 076°52′43″ W., near the mouth of Mitchell Hill Creek, and bounded to the west by a line that runs parallel along longitude 076°53′41″ W. just north of Wakema, Virginia.<br>Buffer area: The waters of Mattaponi River extending 200 yards outwards from east and west boundary lines described in this section.<br>Spectator area: The regulated area cannot accommodate spectator vessels due to limitations posed by shallow water and insufficient waters to provide adequate separation between race course and other vessels. Spectators are encouraged to view the race from points along the adjacent shoreline. |
| **(d.) Coast Guard Sector North Carolina—COTP Zone** | | | | |
| 1 .......... | September—4th or last Saturday and or Sunday. | Swim the Loop and Motts Channel Sprint. | Without Limits Coaching, Inc. | All waters surrounding Harbor Island, NC including Intracoastal waterway, Lees Cut, Banks Channel and Motts Channel. Enforcement area extends approximately 100 yards from the shoreline of Harbor Island and is bounded by a line connecting the following points: Latitude 34°12′55″ N., longitude 077°48′59″ W., thence northeast to latitude 34°13′16″ N., longitude 077°48′39″ W., thence southeast to latitude 34°13′06″ N., longitude 077°48′18″ W., thence east to latitude 34°13′12″ N., longitude 077°47′41″ W., thence southeast to latitude 34°13′06″ N., longitude 077°47′33″ W., thence south to latitude 34°12′31″ N., longitude 077°47′47″ W., thence southwest to latitude 34°12′11″ N., longitude 077°48′01″ W., thence northwest to latitude 34°12′29″ N., longitude 077°48′29″ W., thence north to latitude 34°12′44″ N., longitude 077°48′32″ W., thence northwest to point of origin. |
| 2 .......... | September—3rd, 4th or last Saturday; October—last Saturday; November—1st and or 2nd Saturday. | Wilmington YMCA Triathlon. | Wilmington, NC, YMCA. | All waters of Motts Channel, from shoreline to shoreline and between Wrightsville Channel Day beacon 14 (LLNR 30220), located at latitude 34°12′17.8″ N., longitude 077°48′09.1″ W., thence westward to Wrightsville Channel Day beacon 25 (LLNR 30255), located at latitude 34°12′52.1″ N., longitude 077°48′53.5″ W. |
| 3 .......... | August—2nd Saturday. | The Crossing ............ | Organization to Support the Arts, Infrastructure, and Learning on Lake Gaston, AKA O'SAIL. | All waters of Lake Gaston, from shoreline to shoreline, directly under the length of Eaton Ferry Bridge (NC State Route 903), commencing at the southern bridge entrance at latitude 36°30′38″ N., longitude 077°57′53″ W., and extending to the northern bridge entrance at latitude 36°31′19″ N., longitude 077°57′33″ W., and bounded to the west by a line drawn parallel and 100 yards from and the western side of Eaton Ferry Bridge near Littleton, NC. |

[1] As noted in paragraph (f) of this section, the enforcement period for each of the listed special local regulations is subject to change.

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 3. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 4. Revise section 165.506 to read as follows:

### § 165.506 Safety Zones; Fireworks Displays in the Fifth Coast Guard District.

(a) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 and the regulations in this section apply to the fireworks safety zones listed in the Table to § 165.506. These regulations will be enforced annually, for the duration of each fireworks event listed in the Table to § 165.506. In the case of inclement weather, the event may be conducted on the day following the date listed in the Table to § 165.506. Annual notice of the exact dates and times of the enforcement period of the regulation with respect to each safety zone, the geographical area, and other details concerning the nature of the fireworks event will be published in Local Notices to Mariners and via Broadcast Notice to Mariners over VHF–FM marine band radio.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, Coast Guard Patrol Commander or the designated on-scene-patrol personnel. Those personnel are comprised of commissioned, warrant, and petty officers of the U.S. Coast Guard. Other Federal, State and local agencies may assist these personnel in the enforcement of the safety zone. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(b) *Notification.* (1) Fireworks barges and launch sites on land that operate within the regulated areas contained in the Table to § 165.506 will have a sign affixed to the port and starboard side of the barge or mounted on a post 3 feet above ground level when on land immediately adjacent to the shoreline and facing the water labeled "FIREWORKS—DANGER—STAY AWAY". This will provide on scene notice that the safety zone will be enforced on that day. This notice will consist of a diamond shaped sign 4 feet by 4 feet with a 3-inch orange retro reflective border. The word "DANGER" shall be 10 inch black block letters centered on the sign with the words "FIREWORKS" and "STAY AWAY" in 6 inch black block letters placed above and below the word "DANGER" respectively on a white background.

(2) Coast Guard Captains of the Port in the Fifth Coast Guard District will notify the public of the enforcement of these safety zones by all appropriate means to affect the widest publicity among the affected segments of the public. Publication in the Local Notice to Mariners, marine information broadcasts, and facsimile broadcasts may be made for these events, beginning 24 to 48 hours before the event is scheduled to begin, to notify the public.

(c) *Contact information.* Questions about safety zones and related events should be addressed to the local Coast Guard Captain of the Port for the area in which the event is occurring. Contact information is listed below. For a description of the geographical area of each Coast Guard Sector—Captain of the Port zone, please see 33 CFR 3.25.

(1) Coast Guard Sector Delaware Bay—Captain of the Port Zone, Philadelphia, Pennsylvania: (215) 271–4940.

(2) Coast Guard Sector Maryland-National Capital Region—Captain of the Port Zone, Baltimore, Maryland: (410) 576–2525.

(3) Coast Guard Sector Hampton Roads—Captain of the Port Zone, Norfolk, Virginia: (757) 483–8567.

(4) Coast Guard Sector North Carolina—Captain of the Port Zone, Wilmington, North Carolina: (877) 229–0770 or (910) 362–4015.

(d) *Enforcement periods.* The safety zones in the Table to § 165.506 will be enforced from 5:30 p.m. to 1 a.m. each day a barge with a "FIREWORKS—DANGER—STAY AWAY" sign on the port and starboard side is on-scene or a "FIREWORKS—DANGER—STAY AWAY" sign is posted on land adjacent to the shoreline, in a location listed in the Table to § 165.506. Vessels may not enter, remain in, or transit through the safety zones during these enforcement periods unless authorized by the Captain of the Port or designated Coast Guard patrol personnel on scene. The enforcement periods for each Safety Zone in the Table to § 165.506 of this section are subject to change, but the duration of enforcement would remain the same or nearly the same total amount of time as stated in its table. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice by publishing a Notice of Enforcement in the **Federal Register**, as well as, issuing a Broadcast Notice to Mariners.

TABLE TO § 165.506

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s)[1] | Location | Safety zone—regulated area |
|---|---|---|---|
| **(a.) Coast Guard Sector Delaware Bay—COTP Zone** | | | |
| 1 | July 2nd, 3rd, 4th or 5th | North Atlantic Ocean, Bethany Beach, DE; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate position latitude 38°32′08″ N., longitude 075°03′15″ W., adjacent to shoreline of Bethany Beach, DE. |
| 2 | Labor Day | Indian River Bay, DE; Safety Zone. | All waters of the Indian River Bay within a 700 yard radius of the fireworks launch location on the pier in approximate position latitude 38°36′42″ N., longitude 075°08′18″ W. |
| 3 | July 2nd, 3rd or 4th | North Atlantic Ocean, Rehoboth Beach, DE; Safety Zone. | All waters of the North Atlantic Ocean within a 360 yard radius of the fireworks barge in approximate position latitude 38°43′01.2″ N., longitude 075°04′21″ W., approximately 400 yards east of Rehoboth Beach, DE. |
| 4 | July 2nd, 3rd, 4th or 5th | North Atlantic Ocean, Avalon, NJ; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°06′19.5″ N., longitude 074°42′02.15″ W., in the vicinity of the shoreline at Avalon, NJ. |
| 5 | July 2nd, 3rd, or 4th, or September 1st–2nd Saturday. | Barnegat Bay, Barnegat Township, NJ; Safety Zone. | The waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°44′50″ N., longitude 074°11′21″ W., approximately 500 yards north of Conklin Island, NJ. |

### TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s) [1] | Location | Safety zone—regulated area |
|---|---|---|---|
| 6 | July 2nd, 3rd, 4th or 5th | North Atlantic Ocean, Cape May, NJ; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 38°55′36″ N., longitude 074°55′26″ W., immediately adjacent to the shoreline at Cape May, NJ. |
| 7 | July 2nd, 3rd, 4th or 5th | Delaware Bay, North Cape May, NJ; Safety Zone. | All waters of the Delaware Bay within a 360 yard radius of the fireworks barge in approximate position latitude 38°58′00″ N., longitude 074°58′30″ W. |
| 8 | July 2nd, 3rd, 4th or 5th. August—3rd Sunday. | Great Egg Harbor Inlet, Margate City, NJ; Safety Zone. | All waters within a 500 yard radius of the fireworks barge in approximate location latitude 39°19′33″ N., longitude 074°31′28″ W., on the Intracoastal Waterway near Margate City, NJ. |
| 9 | July 2nd, 3rd, 4th or 5th. August every Thursday; September 1st Thursday. | Metedeconk River, Brick Township, NJ; Safety Zone. | The waters of the Metedeconk River within a 300 yard radius of the fireworks launch platform in approximate position latitude 40°03′24″ N., longitude 074°06′42″ W., near the shoreline at Brick Township, NJ. |
| 10 | July—2nd, 3rd, 4th or 5th. | North Atlantic Ocean, Atlantic City, NJ; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge located at latitude 39°20′58″ N., longitude 074°25′58″ W., and within 500 yard radius of a fireworks barge located at latitude 39°21′2″ N., longitude 074°25′06″ W., near the shoreline at Atlantic City, NJ. |
| 11 | July 2nd, 3rd, 4th or 5th. October—1st or 2nd Saturday. | North Atlantic Ocean, Ocean City, NJ; Safety Zone. | The waters of the North Atlantic Ocean within a 500 yard radius of the fireworks barge in approximate location latitude 39°16′22″ N., longitude 074°33′54″ W., in the vicinity of the shoreline at Ocean City, NJ. |
| 12 | May—4th Saturday | Barnegat Bay, Ocean Township, NJ; Safety Zone. | All waters of Barnegat Bay within a 500 yard radius of the fireworks barge in approximate position latitude 39°47′33″ N., longitude 074°10′46″ W. |
| 13 | July 2nd, 3rd, 4th or 5th | Little Egg Harbor, Parker Island, NJ; Safety Zone. | All waters of Little Egg Harbor within a 500 yard radius of the fireworks barge in approximate position latitude 39°34′18″ N., longitude 074°14′43″ W., approximately 50 yards north of Parkers Island. |
| 14 | September—3rd Saturday. | Delaware River, Chester, PA; Safety Zone. | All waters of the Delaware River near Chester, PA just south of the Commodore Barry Bridge within a 250 yard radius of the fireworks barge located in approximate position latitude 39°49′43.2″ N., longitude 075°22′42″ W. |
| 15 | September—3rd Saturday. | Delaware River, Essington, PA; Safety Zone. | All waters of the Delaware River near Essington, PA, west of Little Tinicum Island within a 250 yard radius of the fireworks barge located in the approximate position latitude 39°51′18″ N., longitude 075°18′57″ W. |
| 16 | July 2nd, 3rd, 4th or 5th; Columbus Day; December 31st, January 1st. | Delaware River, Philadelphia, PA; Safety Zone. | All waters of Delaware River, adjacent to Penns Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N., longitude 075°08′28.1″ W., thence to latitude 39°56′29.1″ N., longitude 075°07′56.5″ W., and bounded on the north by the Benjamin Franklin Bridge. |
| 17 | July 2nd, 3rd, 4th or 5th | N. Atlantic Ocean, Sea Isle City, NJ; Safety Zone. | All waters of N. Atlantic Ocean within a 350 yard radius of a fireworks barge located approximately at position latitude 39°08′49.5″ N., longitude 074°41′25.1″ W., near Sea Isle City, NJ. |
| 18 | April 8th; July 2nd, 3rd, 4th or 5th; December 31st. | Rehoboth Bay, DE; Safety Zone. | All waters within a 500 yard radius of a fireworks barge located at position latitude 38°41′21″ N., longitude 075°05′00″ W. at Rehoboth Bay near Dewey Beach, DE. |
| **(b.) Coast Guard Sector Maryland-National Capital Region—COTP Zone** | | | |
| 1 | April—1st or 2nd Saturday. | Washington Channel, Upper Potomac River, Washington, DC; Safety Zone. | All waters of the Upper Potomac River within 170 yards radius of the fireworks barge in approximate position latitude 38°52′20.3″ N., longitude 077°01′17.5″ W., located within the Washington Channel in Washington Harbor, DC. |
| 2 | July 4th; December—1st and 2nd Saturday; December 31st. | Severn River and Spa Creek, Annapolis, MD; Safety Zone. | All waters of the Severn River and Spa Creek within a 300 yard radius of the fireworks barge in approximate position 38°58′41.76″ N., 076°28′34.2″ W., located near the entrance to Spa Creek, Annapolis, MD. |
| 3 | July—4th, or Saturday before or after Independence Day holiday. | Middle River, Baltimore County, MD; Safety Zone. | All waters of the Middle River within a 300 yard radius of the fireworks barge in approximate position latitude 39°17′45″ N., longitude 076°23′49″ W., approximately 300 yards east of Rockaway Beach, near Turkey Point. |
| 4 | December 31 | Upper Potomac River, Washington, DC; Safety Zone. | All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′14″ N., 077°02′10″ W., located near the waterfront (King Street) at Alexandria, Virginia. |
| 5 | June 14th; July 4th; September—2nd Saturday; December 31st. | Northwest Harbor (East Channel), Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position 39°15′55″ N., 076°34′35″ W., located adjacent to the East Channel of Northwest Harbor. |

### TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s) [1] | Location | Safety zone—regulated area |
|---|---|---|---|
| 6 ............ | May—2nd or 3rd Thursday or Friday; July 4th; December 31st. | Baltimore Inner Harbor, Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 100 yard radius of the fireworks barge in approximate position latitude 39°17′01″ N., longitude 076°36′31″ W., located at the entrance to Baltimore Inner Harbor, approximately 125 yards southwest of pier 3. |
| 7 ............ | May—2nd or 3rd Thursday or Friday; July 4th December 31st. | Baltimore Inner Harbor, Patapsco River, MD; Safety Zone. | The waters of the Patapsco River within a 100 yard radius of approximate position latitude 39°17′04″ N., longitude 076°36′36″ W., located in Baltimore Inner Harbor, approximately 125 yards southeast of pier 1. |
| 8 ............ | July 4th; December 31st | Northwest Harbor (West Channel) Patapsco River, MD; Safety Zone. | All waters of the Patapsco River within a 300 yard radius of the fireworks barge in approximate position latitude 39°16′21″ N., longitude 076°34′38″ W., located adjacent to the West Channel of Northwest Harbor. |
| 9 ............ | July—4th, or Saturday before or after Independence Day holiday. | Patuxent River, Calvert County, MD; Safety Zone. | All waters of the Patuxent River within a 200 yard radius of the fireworks barge located at latitude 38°19′17″ N., longitude 076°27′45″ W., approximately 800 feet from shore at Solomons Island, MD. |
| 10 ........... | July 3rd .......................... | Chesapeake Bay, Chesapeake Beach, MD; Safety Zone. | All waters of the Chesapeake Bay within a 200 yard radius of the fireworks barge in approximate position latitude 38°41′36″ N., longitude 076°31′30″ W., and within a 200 yard radius of the fireworks barge in approximate position latitude 38°41′28″ N., longitude 076°31′29″ W., located near Chesapeake Beach, Maryland. |
| 11 ........... | July 4th .......................... | Choptank River, Cambridge, MD; Safety Zone. | All waters of the Choptank River within a 300 yard radius of the fireworks launch site at Great Marsh Point, located at latitude 38°35′06″ N., longitude 076°04′46″ W. |
| 12 ........... | July—2nd, 3rd or last Saturday. | Potomac River, Fairview Beach, Charles County, MD; Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°19′57″ N., longitude 077°14′40″ W., located north of the shoreline at Fairview Beach, Virginia. |
| 13 ........... | May—last Saturday; July 4th. | Potomac River, Charles County, MD; Mount Vernon, Safety Zone. | All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°42′30″ N., longitude 077°04′47″ W.; thence to latitude 38°42′18″ N., longitude 077°04′42″ W.; thence to latitude 38°42′11″ N., longitude 077°05′10″ W.; thence to latitude 38°42′22″ N., longitude 077°05′12″ W.; thence to point of origin located along the Potomac River shoreline at George Washington's Mount Vernon Estate, Fairfax County, VA. |
| 14 ........... | October—1st Saturday ... | Dukeharts Channel, Potomac River, MD; Safety Zone. | All waters of the Potomac River within a 300 yard radius of the fireworks barge in approximate position latitude 38°13′27″ N., longitude 076°44′48″ W., located adjacent to Dukeharts Channel near Coltons Point, Maryland. |
| 15 ........... | July—day before Independence Day holiday and July 4th; November—3rd Thursday, 3rd Saturday and last Friday; December—1st, 2nd and 3rd Friday. | Potomac River, National Harbor, MD; Safety Zone. | All waters of the Potomac River within an area bound by a line drawn from the following points: latitude 38°47′13″ N., longitude 077°00′58″ W., thence to latitude 38°46′51″ N., longitude 077°01′15″ W., thence to latitude 38°47′25″ N., longitude 077°01′33″ W., thence to latitude 38°47′32″ N., longitude 077°01′08″ W., thence to the point of origin, located at National Harbor, Maryland. |
| 16 ........... | Sunday before or after July 4th, July 4th. | Susquehanna River, Havre de Grace, MD; Safety Zone. | All waters of the Susquehanna River within a 300 yard radius of approximate position latitude 39°32′06″ N., longitude 076°05′22″ W., located on the island at Millard Tydings Memorial Park. |
| 17 ........... | June and July—Saturday before Independence Day holiday. | Miles River, St. Michaels, MD; Safety Zone. | All waters of the Miles River within a 200 yard radius of approximate position latitude 38°47′42″ N., longitude 076°12′51″ W., located at the entrance to Long Haul Creek. |
| 18 ........... | July 3rd .......................... | Tred Avon River, Oxford, MD; Safety Zone. | All waters of the Tred Avon River within a 150 yard radius of the fireworks barge in approximate position latitude 38°41′24″ N., longitude 076°10′37″ W., approximately 500 yards northwest of the waterfront at Oxford, MD. |
| 19 ........... | July 3rd .......................... | Northeast River, North East, MD; Safety Zone. | All waters of the Northeast River within a 300 yard radius of the fireworks barge in approximate position latitude 39°35′26″ N., longitude 075°57′00″ W., approximately 400 yards south of North East Community Park. |
| 20 ........... | July—1st, 2nd or 3rd Saturday. | Upper Potomac River, Washington, D.C.; Safety Zone. | All waters of the Upper Potomac River within a 300 yard radius of the fireworks barge in approximate position 38°48′38″ N., 077°01′56″ W., located east of Oronoco Bay Park at Alexandria, Virginia. |
| 21 ........... | March through October, at the conclusion of evening MLB games at Washington Nationals Ball Park. | Anacostia River, Washington, DC; Safety Zone. | All waters of the Anacostia River within a 150 yard radius of the fireworks barge in approximate position latitude 38°52′13″ N., longitude 077°00′16″ W., located near the Washington Nationals Ball Park. |
| 22 ........... | June—last Saturday or July—1st Saturday; July—3rd, 4th or last Saturday or September—Saturday before Labor Day (observed). | Potomac River, Prince William County, VA; Safety Zone. | All waters of the Potomac River within a 200 yard radius of the fireworks barge in approximate position latitude 38°34′09″ N., longitude 077°15′32″ W., located near Cherry Hill, Virginia. |

### TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s)[1] | Location | Safety zone—regulated area |
|---|---|---|---|
| 23 | July 4th | North Atlantic Ocean, Ocean City, MD; Safety Zone. | All waters of the North Atlantic Ocean in an area bound by the following points: latitude 38°19′39.9″ N., longitude 075°05′03.2″ W.; thence to latitude 38°19′36.7″ N., longitude 075°04′53.5″ W.; thence to latitude 38°19′45.6″ N., longitude 075°04′49.3″ W.; thence to latitude 38°19′49.1″ N., longitude 075°05′00.5″ W.; thence to point of origin. The size of the safety zone extends approximately 300 yards offshore from the fireworks launch area located at the high water mark on the beach. |
| 24 | May—Sunday before Memorial Day (observed). June 29th; July 4th and July every Sunday. August—1st Sunday and Sunday before Labor Day (observed). | Isle of Wight Bay, Ocean City, MD; Safety Zone. | All waters of Isle of Wight Bay within a 200 yard radius of the fireworks barge in approximate position latitude 38°22′31″ N., longitude 075°04′34″ W. |
| 25 | July 4th | Assawoman Bay, Fenwick Island—Ocean City, MD; Safety Zone. | All waters of Assawoman Bay within a 360 yard radius of the fireworks launch location on the pier at the West end of Northside Park, in approximate position latitude 38°25′55″ N., longitude 075°03′53″ W. |
| 26 | July 4th; December 31st | Baltimore Harbor, Baltimore Inner Harbor, MD; Safety Zone. | All waters of Baltimore Harbor, Patapsco River, within a 280 yard radius of a fireworks barge in approximate position latitude 39°16′36.7″ N., longitude 076°35′53.8″ W., located northwest of the Domino Sugar refinery wharf at Baltimore, Maryland. |
| 27 | Thursday before July 4th (observed); and or July 4th. | Chester River, Kent Island Narrows, MD, Safety Zone. | All waters of Chester River, Kent Narrows North Approach, within a 300 yard radius of the fireworks launch site at Kent Island in approximate position latitude 38°58′44.4″ N., longitude 076°14′51.7″ W., in Queen Anne's County, MD. |
| 28 | Sunday before or after July 4th, July 4th. | Susquehanna River, Havre de Grace, MD; Safety Zone. | All waters of the Susquehanna River within a 300 yard radius of the fireworks barge in approximate position latitude 39°32′42″ N., longitude 076°04′29″ W., located east of the waterfront at Havre de Grace, MD. |
| **(c.) Coast Guard Sector Hampton Roads—COTP Zone** | | | |
| 1 | July 4th | Linkhorn Bay, Virginia Beach, VA, Safety Zone. | All waters of the Linkhorn Bay within a 400 yard radius of the fireworks display in approximate position latitude 36°52′20″ N., longitude 076°00′38″ W., located near the Cavalier Golf and Yacht Club, Virginia Beach, Virginia. |
| 2 | September—last Friday or October—1st Friday. | York River, West Point, VA, Safety Zone. | All waters of the York River near West Point, VA within a 400 yard radius of the fireworks display located in approximate position latitude 37°31′25″ N., longitude 076°47′19″ W. |
| 3 | July 4th | York River, Yorktown, VA, Safety Zone. | All waters of the York River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′14″ N., longitude 076°30′02″ W., located near Yorktown, Virginia. |
| 4 | July 4th, July 5th, July 6th, or July 7th. | James River, Newport News, VA, Safety Zone. | All waters of the James River within a 325 yard radius of the fireworks barge in approximate position latitude 36°58′30″ N., longitude 076°26′19″ W., located in the vicinity of the Newport News Shipyard, Newport News, Virginia. |
| 5 | June—4th Friday; July—1st Friday; July 4th. | Chesapeake Bay, Norfolk, VA, Safety Zone. | All waters of the Chesapeake Bay within a 400 yard radius of the fireworks display located in position latitude 36°57′21″ N., longitude 076°150′0″ W., located near Ocean View Fishing Pier. |
| 6 | July 4th or 5th | Chesapeake Bay, Virginia Beach, VA, Safety Zone. | All waters of the Chesapeake Bay 400 yard radius of the fireworks display in approximate position latitude 36°55′02″ N., longitude 076°03′27″ W., located at the First Landing State Park at Virginia Beach, Virginia. |
| 7 | July 4th; December 31st, January—1st. | Elizabeth River, Southern Branch, Norfolk, VA, Safety Zone. | All waters of the Elizabeth River Southern Branch in an area bound by the following points: latitude 36°50′54.8″ N., longitude 076°18′10.7″ W.; thence to latitude 36°51′7.9″ N., longitude 076°18′01″ W.; thence to latitude 36°50′45.6″ N., longitude 076°17′44.2″ W.; thence to latitude 36°50′29.6″ N., longitude 076°17′23.2″ W.; thence to latitude 36°50′7.7″ N., longitude 076°17′32.3″ W.; thence to latitude 36°49′58″ N., longitude 076°17′28.6″ W.; thence to latitude 36°49′52.6″ N., longitude 076°17′43.8″ W.; thence to latitude 36°50′27.2″ N., longitude 076°17′45.3″ W. thence to the point of origin. |
| 8 | July—3rd Saturday | John H. Kerr Reservoir, Clarksville, VA, Safety Zone. | All waters of John H. Kerr Reservoir within a 400 yard radius of approximate position latitude 36°37′51″ N., longitude 078°32′50″ W., located near the center span of the State Route 15 Highway Bridge. |
| 9 | June, July, August, and September—every Wednesday, Thursday, Friday, Saturday and Sunday. July 4th. | North Atlantic Ocean, Virginia Beach, VA, Safety Zone A. | All waters of the North Atlantic Ocean within a 1000 yard radius of the center located near the shoreline at approximate position latitude 36°51′12″ N., longitude 075°58′06″ W., located off the beach between 17th and 31st streets. |

### TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s)[1] | Location | Safety zone—regulated area |
|---|---|---|---|
| 10 ............ | September—last Saturday or October—1st Saturday. | North Atlantic Ocean, VA Beach, VA, Safety Zone B. | All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°50′35″ N., longitude 075°58′09″ W., located on the 14th Street Fishing Pier. |
| 11 ............ | Friday, Saturday and Sunday Labor Day Weekend. | North Atlantic Ocean, VA Beach, VA, Safety Zone C. | All waters of the North Atlantic Ocean within a 350 yard radius of approximate position latitude 36°49′55″ N., longitude 075°58′00″ W., located off the beach between 2nd and 6th streets. |
| 12 ............ | July 4th .......................... | Nansemond River, Suffolk, VA, Safety Zone. | All waters of the Nansemond River within a 350 yard radius of approximate position latitude 36°44′27″ N., longitude 076°34′42″ W., located near Constant's Wharf in Suffolk, VA. |
| 13 ............ | July 4th .......................... | Chickahominy River, Williamsburg, VA, Safety Zone. | All waters of the Chickahominy River within a 400 yard radius of the fireworks display in approximate position latitude 37°14′50″ N., longitude 076°52′17″ W., near Barrets Point, Virginia. |
| 14 ............ | July—3rd, 4th and 5th .... | Great Wicomico River, Mila, VA, Safety Zone. | All waters of the Great Wicomico River located within a 140 yard radius of the fireworks display at approximate position latitude 37°50′31″ N., longitude 076°19′42″ W. near Mila, Virginia. |
| 15 ............ | July—1st Friday, Saturday and Sunday. | Cockrell's Creek, Reedville, VA, Safety Zone. | All waters of Cockrell's Creek located within a 140 yard radius of the fireworks display at approximate position latitude 37°49′54″ N., longitude 076°16′44″ W. near Reedville, Virginia. |
| 16 ............ | May—last Sunday .......... | James River, Richmond, VA, Safety Zone. | All waters of the James River located within a 140 yard radius of the fireworks display at approximate position latitude 37°31′13.1″ N., longitude 077°25′07.84″ W. near Richmond, Virginia. |
| 17 ............ | June—last Saturday ....... | Rappahannock River, Tappahannock, VA, Safety Zone. | All waters of the Rappahannock River located within a 140 yard radius of the fireworks display at approximate position latitude 37°55′12″ N., longitude 076°49′12″ W. near Tappahannock, Virginia. |
| 18 ............ | July 4th, August—1st Friday, Saturday and Sunday, and December 31st. | Cape Charles Harbor, Cape Charles, VA, Safety Zone. | All waters of Cape Charles Harbor located within a 125 yard radius of the fireworks display at approximate position latitude 37°15′46.5″ N., longitude 076°01′30.3″ W. near Cape Charles, Virginia. |
| 19 ............ | July 3rd or 4th ................ | Pagan River, Smithfield, VA, Safety Zone. | All waters of the Pagan River located within a 140 yard radius of the fireworks display at approximate position latitude 36°59′18″ N., longitude 076°37′45″ W. near Smithfield, Virginia. |
| 20 ............ | July 4th .......................... | Sandbridge Shores, Virginia Beach, VA, Safety Zone. | All waters of Sandbridge Shores located within a 100 yard radius of the fireworks display at approximate position latitude 36°4324.9″ N., longitude 075°5624.9″ W. near Virginia Beach, Virginia. |
| 21 ............ | July 4th, 5th or 6th ......... | Chesapeake Bay, Virginia Beach, VA, Safety Zone. | All waters of Chesapeake Bay located within a 200 yard radius of the fireworks display at approximate position latitude 36°5458.18″ N., longitude 076°0644.3″ W. near Virginia Beach, Virginia. |
| 22 ............ | July 3rd, 4th and 5th ...... | Urbanna Creek, Urbanna, VA; Safety Zone. | All waters of Urbanna Creek within a 120 yard radius of the fireworks launch site at latitude 37°38′09″ N., longitude 076°34′03″ W., located on land near the east shoreline of Urbanna Creek and south of Bailey Point. |
| 23 ............ | April—August, every Friday and Saturday; July 2nd, 3rd, 4th and 5th; last Sunday in August; and Friday, Saturday and Sunday of Labor day weekend. | Elizabeth River Eastern Branch, Norfolk, VA; Safety Zone. | All waters of Eastern Branch Elizabeth River within the area along the shoreline immediately adjacent to Harbor Park Stadium ball park and outward into the river bound by a line drawn from latitude 36°50′30″ N., longitude 076°16′39.9″ W., thence south to 36°50′26.6″ N., longitude 076°16′39″ W., thence northwest to 36°50′28.8″ N., longitude 076°16′49.1″ W., thence north to 36°50′30.9″ N., longitude 076°16′48.6″ W., thence east along the shoreline to point of origin. |
| **(d.) Coast Guard Sector North Carolina—COTP Zone** | | | |
| 1 ............. | July 4th; October—1st Saturday. | Morehead City Harbor Channel, NC, Safety Zone. | All waters of the Morehead City Harbor Channel that fall within a 360 yard radius of latitude 34°43′01″ N., longitude 076°42′59.6″ W., a position located at the west end of Sugar Loaf Island, NC. |
| 2 ............. | April—2nd Saturday; July 4th; August—3rd Monday; October—1st Saturday. | Cape Fear River, Wilmington, NC, Safety Zone. | All waters of the Cape Fear River within an area bound by a line drawn from the following points: latitude 34°13′54″ N., longitude 077°57′06″ W.; thence northeast to latitude 34°13′57″ N., longitude 077°57′05″ W.; thence north to latitude 34°14′11″ N., longitude 077°57′07″ W.; thence northwest to latitude 34°14′22″ N., longitude 077°57′19″ W.; thence east to latitude 34°14′22″ N., longitude 077°57′06″ W.; thence southeast to latitude 34°14′07″ N., longitude 077°57′00″ W.; thence south to latitude 34°13′54″ N., longitude 077°56′58″ W.; thence to the point of origin, located approximately 500 yards north of Cape Fear Memorial Bridge. |
| 3 ............. | July 1st Saturday and July 4th. | Green Creek and Smith Creek, Oriental, NC, Safety Zone. | All waters of Green Creek and Smith Creek that fall within a 300 yard radius of the fireworks launch site at latitude 35°01′29.6″ N., longitude 076°42′10.4″ W., located near the entrance to the Neuse River in the vicinity of Oriental, NC. |
| 4 ............. | July 4th .......................... | Pasquotank River, Elizabeth City, NC, Safety Zone. | All waters of the Pasquotank River within a 300 yard radius of the fireworks launch barge in approximate position latitude 36°17′47″ N., longitude 076°12′17″ W., located approximately 400 yards north of Cottage Point, NC. |

### TABLE TO § 165.506—Continued

[All coordinates listed in the Table to § 165.506 reference Datum NAD 1983.]

| Number | Enforcement period(s) [1] | Location | Safety zone—regulated area |
|---|---|---|---|
| 5 ............. | July 4th, or July 5th ........ | Currituck Sound, Corolla, NC, Safety Zone. | All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N., longitude 075°49′56.3″ W., located near Whale Head Bay. |
| 6 ............. | July 4th; November—3rd Saturday. | Middle Sound, Figure Eight Island, NC, Safety Zone. | All waters of the Figure Eight Island Causeway Channel from latitude 34°16′32″ N., longitude 077°45′32″ W., thence east along the marsh to latitude 34°16′19″ N., longitude 077°44′55″ W., thence south to the causeway at latitude 34°16′16″ N., longitude 077°44′58″ W., thence west along the shoreline to latitude 34°16′29″ N., longitude 077°45′34″ W., thence back to the point of origin. |
| 7 ............. | June—2nd Saturday; July 4th. | Pamlico River, Washington, NC, Safety Zone. | All waters of Pamlico River and Tar River within a 300 yard radius of latitude 35°32′25″ N., longitude 077°03′42″ W., a position located on the southwest shore of the Pamlico River, Washington, NC. |
| 8 ............. | July 4th .......................... | Neuse River, New Bern, NC, Safety Zone. | All waters of the Neuse River within a 360 yard radius of the fireworks barge in approximate position latitude 35°06′07.1″ N., longitude 077°01′35.8″ W.; located 420 yards north of the New Bern, Twin Span, high-rise bridge. |
| 9 ............. | July 4th .......................... | Edenton Bay, Edenton, NC, Safety Zone. | All waters within a 300 yard radius of position latitude 36°03′04″ N., longitude 076°36′18″ W., approximately 150 yards south of the entrance to Queen Anne Creek, Edenton, NC. |
| 10 ........... | July 4th. November—Saturday following Thanksgiving Day. | Motts Channel, Banks Channel, Wrightsville Beach, NC, Safety Zone. | All waters of Motts Channel within a 500 yard radius of the fireworks launch site in approximate position latitude 34°12′29″ N., longitude 077°48′27″ W., approximately 560 yards south of Sea Path Marina, Wrightsville Beach, NC. |
| 11 ........... | July 4th .......................... | Cape Fear River, Southport, NC, Safety Zone. | All waters of the Cape Fear River within a 600 yard radius of the fireworks barge in approximate position latitude 33°54′40″ N., longitude 078°01′18″ W., approximately 700 yards south of the waterfront at Southport, NC. |
| 12 ........... | July 4th .......................... | Big Foot Slough, Ocracoke, NC, Safety Zone. | All waters of Big Foot Slough within a 300 yard radius of the fireworks launch site in approximate position latitude 35°06′54″ N., longitude 075°59′24″ W., approximately 100 yards west of the Silver Lake Entrance Channel at Ocracoke, NC. |
| 13 ........... | August—1st Tuesday ..... | New River, Jacksonville, NC, Safety Zone. | All waters of the New River within a 300 yard radius of the fireworks launch site in approximate position latitude 34°44′45″ N., longitude 077°26′18″ W., approximately one half mile south of the Hwy 17 Bridge, Jacksonville, North Carolina. |
| 14 ........... | July 4th .......................... | Pantego Creek, Belhaven, NC, Safety Zone. | All waters on the Pantego Creek within a 200 yard radius of the launch site on land at position 35°32′35″ N., 076°37′46″ W. |
| 15 ........... | July 4th .......................... | Atlantic Intracoastal Waterway, Swansboro, NC, Safety Zone. | All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of approximate position latitude 34°41′02″ N., longitude 077°07′04″ W., located on Pelican Island. |
| 16 ........... | September—4th or last Saturday. | Shallowbag Bay, Manteo, NC; Safety Zone. | All waters of Shallowbag Bay within a 200 yard radius of a fireworks barge anchored at latitude 35°54′31″ N., longitude 075°39′42″ W. |
| 17 ........... | May—3rd Saturday ........ | Pasquotank River; Elizabeth City, NC; Safety Zone. | All waters of the Pasquotank River within a 300 yard radius of the fireworks barge at latitude 36°17′47″ N., longitude 076°12′17″ W., located north of Cottage Point at the shoreline of the Pasquotank River. |
| 18 ........... | October—2nd Saturday | Atlantic Intracoastal Waterway; Bogue Inlet, Swansboro, NC; Safety Zone. | All waters of the Atlantic Intracoastal Waterway within a 300 yard radius of the fireworks launch site at latitude 34°41′02″ N., longitude 077°07′04″ W., located at Bogue Inlet, near Swansboro, NC. |

[1] As noted in paragraph (d) of this section, the enforcement period for each of the listed safety zones is subject to change.

Dated: August 24, 2016.

**Meredith L. Austin,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2016–21996 Filed 9–13–16; 8:45 am]

**BILLING CODE 9110–04–P**

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2016–0878]**

## Security Zone; Protection of Military Cargo, Captain of the Port Zone Puget Sound

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce regulations for the Sitcum Waterway security zone in Commencement Bay, Tacoma, Washington, from 6 a.m. on September 15, 2016, through 11:59 p.m. on September 20, 2016, unless cancelled sooner by the Captain of the Port. This action is necessary for the security of Department of Defense assets and military cargo in the navigable waters of Puget Sound and adjacent waters. Entry into this security zone is prohibited

unless authorized by the Captain of the Port or his Designated Representative, or is otherwise provided by exemption or waiver provisions in these security zone regulations.

**DATES:** The regulations in 33 CFR 165.1321 will be enforced from 6 a.m. on September 15, 2016, through 11:59 p.m. on September 20, 2016, for the security zone indentified in paragraph (c)(2) of that section, unless cancelled sooner by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice of enforcement, call or email Chief Warrant Officer Jeffrey Zappen, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6076, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce regulations in 33 CFR 165.1321 for the Sitcum Waterway Security Zone identified in paragraph (c)(2) of that section, from September 15, 2016, at 6 a.m. through 11:59 p.m. on September 20, 2016, unless cancelled sooner by the Captain of the Port or Designated Representative. Under the provisions of 33 CFR 165.1321, the security zone will provide for the regulation of vessel traffic in the vicinity of military cargo loading facilities in the navigable waters of the United States. The security zones also exclude persons and vessels from the immediate vicinity of these facilities during military cargo loading and unloading operations. In addition, the regulation establishes requirements for all vessels to obtain permission of the COTP or Designated Representative, including the Vessel Traffic Service (VTS), to enter, move within, or exit these security zones when they are enforced. Entry into this zone is prohibited unless authorized by the Captain of the Port or a Designated Representative, or is otherwise allowed under exemption or waiver provisions in 33 CFR 165.1321(h) or (i).

This notice of enforcement is issued under authority of 33 CFR 165.1321 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with notification of this enforcement period via marine information broadcasts and on-scene assets. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice of enforcement, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: September 8, 2016.

**M.W. Raymond,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 2016–22098 Filed 9–13–16; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF EDUCATION

## 34 CFR Chapter I

**RIN 1875–AA11**

**[Docket ID ED–2016–OS–0002]**

# Secretary's Final Supplemental Priority for Discretionary Grant Programs

**AGENCY:** Department of Education.

**ACTION:** Final priority.

**SUMMARY:** To further support a comprehensive education agenda and to address concentrated poverty and related segregation in our Nation's schools, the Secretary of Education establishes an additional priority primarily for use in any discretionary grant program focused on elementary and secondary education, as appropriate, for fiscal year (FY) 2016 and future years. The Secretary adds this priority to the existing supplemental priorities and definitions for discretionary grant programs that were published in the **Federal Register** on December 10, 2014 (2014 Supplemental Priorities). This priority reflects our efforts to address emerging needs in education.

**DATES:** This supplemental priority is effective October 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ramin Taheri, U.S. Department of Education, 400 Maryland Avenue SW., Room 5E343, Washington, DC 20202–5930. Telephone: (202) 453–5961 or by email: *ramin.taheri@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Program Authority:** 20 U.S.C. 1221e–3, 3474.

We published a notice of proposed priority (NPP) in the **Federal Register** on June 8, 2016 (81 FR 36833). That document contained background information and our reasons for proposing the additional priority.

*Public Comment:* In response to our invitation in the NPP, 13 parties submitted comments on the proposed priority.

*Analysis of Comments and Changes:* An analysis of the comments follows. We group our discussion according to the general issues raised. We do not address technical and other minor changes.

*Comment:* Several commenters expressed concern that the proposed priority would adversely affect rural communities and students who reside within them, where the geographic isolation of students from one particular racial, ethnic, or socioeconomic group would render efforts to diversify schools difficult or impossible. Many of these commenters expressed support for the priority and the importance of addressing the growing segregation and inequality in our Nation's schools, but suggested that the Department use the priority as an invitational priority, as opposed to a competitive preference or absolute priority, to ensure that rural applicants are not unfairly disadvantaged in grant competitions.

*Discussion:* We appreciate the commenters' concern that the priority may not be appropriate or beneficial for rural communities whose geographical constraints make increasing socioeconomic diversity infeasible. First, we note that increasing educational equity for rural students and communities is a focus area for the Department of Education (the Department); for example, *Priority 4—Supporting High-Need Students* from the 2014 Supplemental Priorities includes language that allows the Department to prioritize projects designed to improve outcomes for students served by rural local educational agencies (LEAs).

Second, we acknowledge that solutions to educational challenges are often different in rural, urban, and suburban communities. We note, however, that the Department has discretion in how and when it will use this priority (including whether to use it as an invitational or other type of priority), and does not intend to use this priority in a way that would disadvantage rural applicants. Rather, it is our intention to use this priority strategically to encourage diversity only in those situations where we believe such efforts are most appropriate and best support the possibility of increasing socioeconomic diversity in schools.

*Changes:* None.

*Comment:* In addition to concerns related to geographically isolated, rural communities, many commenters raised questions regarding the utility of the priority in Indian country. Specifically, these commenters expressed concerns about how the priority would affect American Indian or Alaska Native students who attend schools in rural areas, on tribal lands that are geographically isolated, or in villages or communities that are not accessible, legally or physically, to students who are not members of a particular American Indian or Alaska Native tribe. One commenter suggested the Department can protect against unintended negative impacts on Native students by including a race-based preference whenever using the priority for socioeconomic diversity.

*Discussion:* We understand and appreciate the concerns raised with respect to Native students and their communities. As with rural LEAs, however, the Department believes that the 2014 Supplemental Priorities include a priority to help address these concerns; specifically, *Priority 4—Serving High-Need Students,* which allows the Department to prioritize projects designed to serve students who are members of federally recognized Indian tribes, provides a sufficient basis for the Department to channel Federal resources toward improved outcomes for Native students. With respect to the comment suggesting that the Department include a race-based preference in tandem with the priority, we note that *Priority 12—Promoting Diversity* from the 2014 Supplemental Priorities includes language that allows the Department to focus on projects designed to increase racial and ethnic diversity. Finally, as mentioned in the discussion of the comments regarding rural communities, while the Department declines to make any changes to the priority based on these comments, we reiterate our intention to use this priority strategically to encourage diversity only in those situations where we believe such efforts are most appropriate and we do not intend to use it in a way that would adversely affect Native students.

*Changes:* None.

*Comment:* Several commenters expressed support for increasing diversity in our Nation's public schools. One commenter suggested that a focus on diversity must be accompanied by concerted efforts to foster and maintain positive and supportive school climates. The commenter further urged the Department to issue guidance or other technical assistance documents related to school diversity. Finally, the commenter suggested that the Department ensure that potential grant applicants wishing to focus on diversity initiate and maintain communications with their local communities.

*Discussion:* We appreciate the comments in support of the priority and the Department's focus on increasing diversity. The Department agrees that a focus on positive school climate is an important part of improving outcomes for all students. Moreover, a positive, supportive school climate may be essential to ensuring that a diverse student body achieves true cohesiveness. While we decline to make any changes to the priority based on this comment, the Department remains committed to exploring avenues to encourage safe, supportive, and positive school climates. For example, *Priority 13—Improving School Climate, Behavioral Supports, and Correctional Education* from the 2014 Supplemental Priorities offers opportunities to direct Federal resources toward projects designed to improve school climate.

We appreciate the comment suggesting that the Department issue guidance or technical assistance documents about school diversity. We agree that additional resources may be helpful in assisting LEAs and communities in undertaking efforts to diversify their schools. We note that there are existing resources, such as the Department's Equity Assistance Centers, that stand ready to offer technical assistance related to school climate issues based on race, national origin, sex, and religion. Moreover, the Department continues to explore all opportunities to develop and issue guidance materials in this and other important policy areas.

Finally, the Department agrees with the recommendation that grant applicants collaborate and communicate with their local communities. Public engagement is an integral part of any comprehensive, successful school diversity strategy. In that regard, the priority includes language that contemplates community input, robust family and community involvement, and other forms of public engagement.

*Changes:* None.

*Comment:* None.

*Discussion:* We are revising paragraph (d) to allow the Department more flexibility to tailor the priority for each competition in which the priority is used in order to narrow the focus on the strategies proving most effective in a specific context or on where the greatest needs are from year to year. We note that revisions to paragraph (d) would still allow the Department to use the paragraph in its entirety, as appropriate.

*Changes:* In the introductory language, subparagraph (ii), and subparagraph (vi) of paragraph (d), we have revised the priority to provide the Department the flexibility described above. In addition, we have revised the wording in subparagraphs (ii), (v), and (vi) so that each will stand better on its own should it be used in isolation in a grant competition.

*Final Priority:* The Secretary establishes the following priority for use primarily in any discretionary grant competition focused on elementary and secondary education, as appropriate, in FY 2016 and future years. This priority is in addition to the 2014 Supplemental Priorities.

### Priority—Increasing Socioeconomic Diversity in Schools

Projects that are designed to increase socioeconomic diversity in educational settings by addressing one or more of the following:

(a) Using established survey or data-collection methods to identify socioeconomic stratification and related barriers to socioeconomic diversity at the classroom, school, district, community, or regional level.

(b) Developing, evaluating, or providing technical assistance on evidence-based policies or strategies designed to increase socioeconomic diversity in schools.

(c) Designing or implementing, with community input, education funding strategies, such as the use of weighted per-pupil allocations of local, State, and eligible Federal funds, to provide incentives for schools and districts to increase socioeconomic diversity.

(d) Developing or implementing policies or strategies to increase socioeconomic diversity in schools that are evidence-based; demonstrate ongoing, robust family and community involvement, including a process for intensive public engagement and consultation; and meet one or more of the following factors—

(i) Are carried out on one or more of an intra-district, inter-district, community, or regional basis;

(ii) Reflect coordination with other relevant government entities, including housing or transportation authorities, to the extent practicable;

(iii) Are based on an existing, public diversity plan or diversity needs assessment; and

(iv) Include one or both of the following strategies—

(A) Establishing school assignment or admissions policies that are designed to give preference to low-income students, students from low-performing schools, or students residing in neighborhoods experiencing concentrated poverty to attend higher-performing schools; or

(B) Establishing or expanding schools that are designed to attract substantial numbers of students from different socioeconomic backgrounds, such as magnet or theme schools, charter schools, or other schools of choice.

*Types of Priorities:* When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute priority:* Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive preference priority:* Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational priority:* Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities and definitions, we invite applications through a notice in the **Federal Register**.

## Executive Orders 12866 and 13563

### *Regulatory Impact Analysis*

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected the approach that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from regulatory requirements and those we have determined as necessary for administering the Department's programs and activities.

*Discussion of Costs and Benefits:* The final priority will not impose significant costs on entities that would receive assistance through the Department's discretionary grant programs. Additionally, the benefits of implementing the final priority outweigh any associated costs because it will allow the Department to focus discretionary grant competitions on this important area.

Application submission and participation in a discretionary grant program are voluntary. The Secretary believes that the costs imposed on applicants by the final priority will be limited to paperwork burden related to preparing an application for a discretionary grant program that is using the priority in its competition. Because the costs of carrying out activities would be paid for with program funds, the costs of implementation would not be a burden for any eligible applicants, including small entities.

*Regulatory Flexibility Act Certification:* For these reasons as well, the Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities.

*Intergovernmental Review:* Some of the programs affected by this final priority are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal**

**Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: September 9, 2016.

**John B. King, Jr.,**

*Secretary of Education.*

[FR Doc. 2016–22104 Filed 9–13–16; 8:45 am]

**BILLING CODE 4000–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2016–0441; A–1–FRL–9952–11–Region I]**

## Air Plan Approval; VT; Prevention of Significant Deterioration, $PM_{2.5}$

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont. The revision sets the amount of $PM_{2.5}$ increment sources are permitted to consume when obtaining a prevention of significant deterioration (PSD) preconstruction permit and requires $PM_{2.5}$ emission offsets under certain circumstances. This action is being taken in accordance with the Clean Air Act.

**DATES:** This direct final rule will be effective November 14, 2016, unless EPA receives adverse comments by October 14, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2016–0441 at *http://www.regulations.gov*, or via email to *McDonnell.Ida@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1653, fax number (617) 918–0653, email *McDonnell.Ida@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Summary of State Submittal
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

### I. Background and Purpose

On October 20, 2010, EPA issued the final rule on the "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (2010 PSD Rule). *See* 75 FR 64864. This rule established several components for making PSD permitting determinations for $PM_{2.5}$, including a system of "increments," which is the mechanism used to estimate significant deterioration of ambient air quality for a pollutant. These increments are codified in 40 CFR 51.166(c) and 40 CFR 52.21(c).

### II. Summary of State Submittal

On July 25, 2014, the VT DEC submitted a revision to its state implementation plan (SIP) primarily addressing permitting requirements for $PM_{2.5}$ emissions. In a letter dated July 13, 2016, VT DEC withdrew some, but not all, of the revisions the State requested in its 2014 SIP submittal. The State withdrew these provisions for various reasons; either because more information would be needed before certain provisions could be approved by EPA into the SIP, one provision was erroneously submitted, or Vermont intends in the near future to revise certain provisions and resubmit them to EPA. On July 20, 2016, EPA's Region I Administrator signed a direct final notice approving the remaining revisions except for revisions Vermont made to its Air Pollution Control Regulations (APCR), Table 2 (Prevention of Significant Deterioration (PSD) Increments) and Table 3 (Levels of Significant Impact).

Vermont revised Table 2 by adding increments for $PM_{2.5}$ as well as some minor grammatical changes. Vermont revised Table 3 by changing the table's title, removing the level of significant impact for Total Suspended Particles, and adding levels for $PM_{2.5}$. Tables 2 and 3 address different aspects of permitting. Table 2 addresses the amount of a pollutant (increment consumption) a major new or modified source may contribute to the ambient air consistent with the CAA's requirements. Table 3 addresses situations in which Vermont's regulations would require emissions offsets, even for major new or modified sources that are subject to PSD preconstruction permitting requirements.

### III. Final Action

EPA has found the PSD increment values added to Table 2 to be consistent with 40 CFR 51.166(c) and has also found that the increment values meet the anti-back sliding requirements of Section 110(l) of the Clean Air Act. Therefore, EPA is approving revised Table 2 into the Vermont SIP.

Vermont revised Table 3 by adding thresholds for $PM_{2.5}$ for Class I, II, and III areas. Major new or modified sources subject to PSD permitting requirements must obtain emissions offsets if the listed thresholds would be exceeded in an area found not to be attaining the national ambient air quality standard. The thresholds in Table 3 for $PM_{2.5}$ for Class II and Class III areas are consistent with the $PM_{2.5}$ thresholds in 40 CFR 51.165(b)(2), while Vermont's thresholds for Class I areas are significantly more stringent than the federal regulation. Vermont also removed from Table 3 the threshold for Total Suspended Particles because EPA's regulations no longer contain a threshold for this pollutant. EPA currently sets the National Ambient Air Quality Standard for particulate matter as $PM_{10}$ and $PM_{2.5}$ and no longer sets a standard for Total Suspended Particles. EPA has found both revisions to Table 3 to be consistent with 40 CFR 51.165(b)(2) and Section 110(l) of the Clean Air Act. Therefore, EPA is approving revised Table 3 into the Vermont SIP.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective November 14, 2016 without further notice unless the Agency receives relevant adverse comments by October 14, 2016.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 14, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont's Air Pollution Control Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov*.

## V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *November 14, 2016*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 8, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart UU—Vermont

■ 2. In § 52.2370(c), the table "EPA Approved Vermont Regulations" is amended by revising the state citation entries for Table 2 and Table 3 to read as follows:

**§ 52.2370 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED VERMONT REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * * | * | * | * | * * |
| Table 2 | Table 2—PSD increments | 7/5/2014 | 9/14/2016, [Insert **Federal Register** citation]. | Added increment thresholds for $PM_{2.5}$. |
| Table 3 | Table 3—Levels of significant impact. | 7/5/2014 | 9/14/2016, [Insert **Federal Register** citation]. | Added levels for $PM_{2.5}$. |
| * * | * | * | * | * * |

[FR Doc. 2016–21881 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2015–0042; FRL–9952–09–Region 8]**

## Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Second Ten-Year $PM_{10}$ Maintenance Plan for Lamar

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Colorado. On May 13, 2013, the Governor of Colorado's designee submitted to the EPA a revised maintenance plan for the Lamar area for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to 10 microns ($PM_{10}$). The EPA is approving the revised maintenance plan with the exception of one aspect of the plan's contingency measures.

**DATES:** This final rule is effective on October 14, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2015–0042. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** James Hou, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6210, *hou.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Lamar area was designated nonattainment for $PM_{10}$ and classified as moderate by operation of law upon enactment of the Clean Air Act (CAA) Amendments of 1990. See 56 FR 56694, 56705, 56736 (November 6, 1991). EPA approved Colorado's nonattainment area SIP for the Lamar $PM_{10}$ nonattainment area on June 9, 1994 (59 FR 29732).

On May 13, 2013, the Governor of Colorado's designee submitted the second 10-year update of the $PM_{10}$ maintenance plan for the Lamar area to the EPA. On June 1, 2016, the EPA published a proposed rulemaking in which we proposed to approve the 10-year update because it demonstrates continued maintenance of the $PM_{10}$ NAAQS through 2025.

### II. Response to Comments

We received one comment letter during the public comment period, which was submitted anonymously.

*Comment:* Given the high number of high wind occurrences, and given the consistently windy nature of the Lamar area, the EPA cannot rely on the Exceptional Events Rule (EER) to ignore $PM_{10}$ exceedances. In doing so, the EPA is failing to provide environmental justice for people in rural areas, by failing to provide them with clean air.

*Response:* 55 exceedances between two monitors over the course of 14 years were reported by the City of Lamar. The EPA notes that high wind events do not have to be rare to be considered an exceptional event. Quoting from the "Interim Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds Under the Exceptional Events Rule," U.S. EPA May 2013 page 20, it states,

> The EPA will use a weight-of-evidence approach to assess each demonstration and comparison of the concentrations during event(s) in question with historical concentration data on a case-by-case basis. The EPA acknowledges that natural events, such as high wind dust events, can recur and still be eligible for exclusion under the EER. Therefore, events do not necessarily have to be rare to satisfy this element.

Of the 34 out of 55 flagged $PM_{10}$ high wind monitored values, which the EPA has concurred with, each event has met the criteria set forth under the EER. Having satisfied these requirements, and having obtained concurrence from the EPA, we find that the exclusion of these data from regulatory decisions is appropriate. Additionally, the EPA's review and concurrence with the 34 of 55 flagged $PM_{10}$ high wind monitored values is consistent with the EER, and such analysis is applied uniformly throughout the state.

## III. Final Action

We are approving the revised Lamar $PM_{10}$ Maintenance Plan that was submitted to us on May 13, 2013, with one exception. We are not acting on the submitted update to the Natural Events Action Plan (NEAP), as the NEAP is not part of the SIP. We are approving the remainder of the revised maintenance plan because it demonstrates maintenance through 2025 as required by CAA section 175A(b), retains the control measures from the initial $PM_{10}$ maintenance plan that the EPA approved on October 25, 2005, and meets other CAA requirements for a section 175A maintenance plan. We are excluding from use in determining that Lamar continues to attain the $PM_{10}$ NAAQS, exceedances of the $PM_{10}$ NAAQS that were recorded at the Lamar Power Plant $PM_{10}$ monitor on February 9, 2002; March 7, 2002; May 21, 2002; June 20, 2002; April 5, 2002; May 22, 2008; January 19, 2009; April 3, 2011; and November 5, 2011, because the exceedances meet the criteria for exceptional events caused by high wind natural events.

Additionally, the EPA is proposing to exclude from use in determining that Lamar continues to attain the $PM_{10}$ NAAQS, exceedances of the $PM_{10}$ NAAQS that were recorded at the Municipal Complex $PM_{10}$ monitor on May 21, 2002; June 20, 2002; April 5, 2005; January 19, 2009; February 8, 2013; March 18, 2012; April 2, 2012; April 9, 2013; May 1, 2013; May 24, 2013; May 25, 2013; May 28, 2013; December 24, 2013; February 16, 2014; March 11, 2014; March 15, 2014; March 18, 2014; March 29, 2014; March 30, 2014; March 31, 2014; April 23, 2014; April 29, 2014; November 10, 2014; April 1, 2015; and April 2, 2015, because the exceedances meet the criteria for exceptional events caused by high wind natural events. We are also approving the revised maintenance plan's 2025 transportation conformity motor vehicle emission budget for $PM_{10}$ of 764 lbs/day.

## IV. Statutory and Executive Orders Review

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting federal requirements and do not impose additional requirements beyond those imposed by state law. For this reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP does not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Country, the final rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* CAA section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 26, 2016.

**Debra H. Thomas,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 2016–21755 Filed 9–13–16; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[EPA–R04–OAR–2015–0250; FRL–9952–32–Region 4]**

## Air Plan Approval; GA Infrastructure Requirements for the 2010 1-Hour $NO_2$ NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD), on March 25, 2013, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide ($NO_2$) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. GA EPD certified that the Georgia SIP contains provisions that ensure the 2010 1-hour $NO_2$ NAAQS is implemented, enforced, and maintained in Georgia. EPA has determined that portions of Georgia's infrastructure submission, submitted on March 25, 2013, addresses certain required infrastructure elements for the 2010 1-hour $NO_2$ NAAQS.

**DATES:** This rule will be effective October 14, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0250. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Richard Wong, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background and Overview

On January 22, 2010, (published at 75 FR 6474, February 9, 2010), EPA promulgated a new 1-hour primary NAAQS for $NO_2$ at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour $NO_2$ NAAQS to EPA no later than January 22, 2013.

In a proposed rulemaking published on June 28, 2016 (81 FR 41905), EPA proposed to approve Georgia's 2010 1-hour $NO_2$ NAAQS infrastructure SIP submission submitted on March 25, 2013, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), for which EPA did not propose any action. On March 18, 2015 (80 FR 14019), EPA approved Georgia's March 25, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour $NO_2$ NAAQS. Therefore, EPA is not taking any action today pertaining to sections 110(a)(2)(C), prong 3 of D(i), and (J). Additionally, on July 11, 2016, EPA published a proposed rule related to the prong 4 element of Georgia's March 25, 2013, SIP submission for the 2010 1-hour $NO_2$ NAAQS. *See* 81 FR 44831. EPA will consider final action on the prong 4 element of Georgia's March 25, 2013, SIP submission for the 2010 1-hour $NO_2$ NAAQS through a separate rulemaking. With respect to the interstate transport requirements of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA does not yet have a submission before the Agency for action. The details of Georgia's submission and the rationale for EPA's action are explained in the proposed rulemaking. Comments on the proposed rulemaking were due on or before July 28, 2016. EPA received no adverse comments on the proposed action.

### II. Final Action

With the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4), EPA is taking final action to action to approve Georgia's infrastructure submission submitted on March 25, 2013, for the 2010 1-hour $NO_2$ NAAQS. EPA is taking final action to approve Georgia's infrastructure SIP submission for the 2010 1-hour $NO_2$ NAAQS because the submission is consistent with section 110 of the CAA.

### III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 2, 2016.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart L—Georgia

■ 2. Section 52.570(e), is amended by adding the entry "110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAAQS" at the end of the table to read as follows:

**§ 52.570 Identification of plan.**

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date/ effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| | | | | |
| * * | * * | | * | * * |
| 110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAASQ. | Georgia ........................................ | 3/25/2013 | 9/14/2016 | With the exception of sections 110(a)(2)(C), prong 3 of D(i), and (J) and sections 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4). |

[FR Doc. 2016–21991 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2015–0501; FRL–9952–31–Region 4]**

## Air Plan Approval and Disapproval; North Carolina: New Source Review for Fine Particulate Matter ($PM_{2.5}$)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, in part, and disapproving, in part, changes to the North Carolina State Implementation Plan (SIP), provided by the North Carolina Department of Environmental Quality (NC DEQ) through the Division of Air Quality (DAQ), to EPA in submittals dated May 16, 2011, (two separate submittals) and September 5, 2013. These SIP submittals modify North Carolina's New Source Review (NSR)—Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR)—permitting regulations and include the adoption of some federal requirements regarding implementation of the fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) through the NSR permitting program. As a result of the disapproval of a portion of the State's NSR requirements, EPA is also approving, in part, and disapproving, in part, the PSD elements of North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 sulfur dioxide ($SO_2$), 2010 nitrogen dioxide ($NO_2$) and the 2012 $PM_{2.5}$ NAAQS, and converting the Agency's previous conditional approvals of the PSD elements of North

Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals. This partial disapproval triggers the requirement for EPA to promulgate a Federal Implementation Plan (FIP) no later than two years from the date of the disapproval unless the State corrects the deficiencies through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP.

**DATES:** This rule will be effective October 14, 2016.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2015–0501. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey of the Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Huey can be reached by telephone at (404) 562–9104 or via electronic mail at *huey.joel@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Overview

In submittals dated May 16, 2011 (two separate submittals), and September 5, 2013, DAQ submitted to EPA changes to the North Carolina SIP with regard to the State's PSD and NNSR regulations found at 15A North Carolina Administrative Code (NCAC) 02D .0530 and 15A NCAC 02D .0531. These SIP submittals modify North Carolina's NSR permitting regulations (for both PSD and NNSR) and include the adoption of some federal requirements regarding implementation of the $PM_{2.5}$ NAAQS through the NSR permitting program. In the notice of proposed rulemaking (NPRM) published on May 10, 2016 (81 FR 28797), EPA proposed to take the following four actions, some with multiple parts, regarding the North Carolina submittals:

- Approval of a May 16, 2011, SIP submittal from North Carolina (as revised and updated by the State's September 5, 2013, SIP submittal) as meeting the requirements of EPA's rule, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)," Final Rule, 73 FR 28321 (May 16, 2008) (hereafter referred to as the "2008 NSR $PM_{2.5}$ Implementation Rule").
- Disapproval of the portions of North Carolina's September 5, 2013, SIP submittal pertaining to adoption and implementation of the $PM_{2.5}$ increments because North Carolina's proposed SIP revisions do not fully meet the requirements of EPA's rulemaking, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)," Final Rule, 75 FR 64864 (October 20, 2010) (hereafter referred to as the "2010 PSD $PM_{2.5}$ Rule"). Specifically, though paragraphs (q) and (v) of North Carolina's revised PSD regulations at 15A NCAC 02D .0530 incorporate the federally required numerical $PM_{2.5}$ increments, North Carolina's regulations fail to include other federally required provisions needed to implement the $PM_{2.5}$ increments, including (1) the definition of "[m]ajor source baseline date" for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(i)(*c*) (defined as October 20, 2010); (2) the definition of "[m]inor source baseline date" for $PM_{2.5}$ codified at 40 CFR 51.166(b)(14)(ii)(*c*) (which establishes the $PM_{2.5}$ trigger date as October 20, 2011); and (3) the definition of "[b]aseline area" codified at 40 CFR 51.166(b)(15)(i).[1] Without these definitions, North Carolina's PSD regulations do not require PSD sources to conduct the appropriate analyses demonstrating that emissions from proposed construction of new major stationary sources or major modifications will not cause or contribute to air quality deterioration beyond the amount allowed by the $PM_{2.5}$ increments. Therefore, EPA proposed to disapprove all of the $PM_{2.5}$ increment provisions set forth in North Carolina's September 5, 2013, SIP submittal, including all of the $PM_{2.5}$-related changes to 15A NCAC 02D .0530 at paragraphs (e), (q), and (v).[2]
- Approval of administrative changes to North Carolina's PSD and NNSR regulations at 15A NCAC 02D .0530 and 15A NCAC 02D .0531 provided by the State in a SIP submittal also dated May 16, 2011, including clarification of the applicability of best available control technology (BACT) and lowest achievable emission rate (LAER) for electrical generating units (EGUs) in the State, and the inclusion of an additional Federal Land Manager (FLM) notification provision.
- Approval, in part, and disapproval, in part, of the PSD elements of North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 $SO_2$, 2010 $NO_2$ and 2012 $PM_{2.5}$ NAAQS and conversion of the Agency's previous conditional approvals of the PSD elements of North Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals.

Comments on the NPRM were due on or before June 9, 2016. The details of North Carolina's submittals and the rationale for EPA's actions are explained in the NPRM.

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[1] North Carolina's regulations at 15A NCAC 02D .0530 use incorporation by reference (IBR) to adopt the federal regulations in the CFR as of May 16, 2008, which do not include the definitions of "major source baseline," "minor source baseline," and "baseline area" that EPA promulgated in the 2010 PSD $PM_{2.5}$ rule. Thus, the definition of "major source baseline date" incorporated into 15A NCAC 02D .0530 does not include the federally required $PM_{2.5}$ major source baseline date of October 20, 2010, but instead states: "In the case of particulate matter and sulfur dioxide, January 6, 1975." Likewise, the definition of "minor source baseline date" incorporated into 15A NCAC 02D .0530 does not include the federally required $PM_{2.5}$ trigger date of October 20, 2011, but instead states: "In the case of particulate matter and sulfur dioxide, August 7, 1977." It is EPA's understanding that North Carolina interprets the term "particulate matter" in North Carolina's regulations to encompass $PM_{2.5}$, resulting in a $PM_{2.5}$ major source baseline date of January 6, 1975, and a $PM_{2.5}$ trigger date of August 7, 1977.

[2] Paragraph (v) establishes the numerical $PM_{2.5}$ increments. Paragraph (q) addresses the Class I $PM_{2.5}$ variances. Paragraph (e) incorporates paragraph (v) by reference. EPA proposed to disapprove 15A NCAC 02D .0530, paragraphs (e), (q), and (v) in part, rather than in their entirety, because the paragraphs also include previously approved $PM_{10}$ increment requirements. Specifically, in addition to making the $PM_{2.5}$-related changes to these paragraphs, North Carolina also revised 15A NCAC 02D .0530, paragraphs (e), (q), and (v), to directly incorporate the $PM_{10}$ increments. Previously, North Carolina had incorporated the $PM_{10}$ increments into 15A NCAC 02D .0530 by reference to the CFR. EPA is approving the $PM_{10}$-related changes to paragraphs (e), (q), and (v).

### II. Response to Comments

EPA received one adverse comment submission, from DAQ, on the May 10, 2016, NPRM to approve, in part, and disapprove, in part, changes to North Carolina's SIP-approved NSR permitting regulations. The comment submission is available in the docket for this final rulemaking action.

In its comments, DAQ objects to EPA's proposed disapproval of the $PM_{2.5}$ increment-related portions of paragraphs (e), (q) and (v) of North Carolina's PSD rule 15A NCAC 02D .0530 for failing to incorporate the definitions of "major source baseline date," "minor source baseline date," and "baseline area" as found in EPA's 2010 PSD $PM_{2.5}$ Rule. DAQ contends that EPA's proposed disapproval of North Carolina's $PM_{2.5}$ increment provisions fails to properly account for the decision by the United States Court of Appeals for the District of Columbia (D.C. Circuit) in *Natural Resource Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir., 2013) (*NRDC*), where the Court determined that $PM_{2.5}$ is not a new pollutant, but rather is encompassed by the statutory definition of the pollutant $PM_{10}$. According to DAQ, North Carolina's regulations, which incorporate by reference the prior federal definitions applicable to "particulate matter" (rather than the definitions applicable to $PM_{2.5}$ promulgated in EPA's 2010 PSD $PM_{2.5}$ Rule), are consistent with the Clean Air Act (CAA or Act) and *NRDC* and can be approved into the SIP as written. For the same reason, DAQ also objects to EPA's proposed disapproval of the PSD elements of seven infrastructure SIP submittals. DAQ's comments incorporate by reference the following documents: (1) Opening Brief of Petitioner in *North Carolina* v. *United States Environmental Protection Agency,* 13–1312 and 14–1186, dated October 9, 2014; (2) Reply Brief of Petitioner for *North Carolina* v. *United States Environmental Protection Agency,* 13–1312 and 14–1186, dated February 10, 2015; and (3) letter from John Skvarla (North Carolina Department of Environment and Natural Resources[3]) to Gina McCarthy (EPA), dated August 22, 2013.

The legal briefs attached to DAQ's comments were filed in the D.C. Circuit by the State of North Carolina in support of the State's consolidated petitions for review of EPA's 2010 PSD $PM_{2.5}$ Rule and of EPA's denial of the State's administrative petition for reconsideration of the PSD $PM_{2.5}$ Rule. In the briefs, the State challenged the 2010 PSD $PM_{2.5}$ Rule on the basis that the rule improperly set new baseline dates for calculating $PM_{2.5}$ increment consumption rather than using the pre-existing particulate matter baseline dates set forth in the CAA. EPA filed a Response Brief in that case disputing the legal arguments in the briefs that DAQ has now submitted to support its comments on this SIP rule. The D.C. Circuit dismissed both of North Carolina's petitions for review as untimely. *See North Carolina* v. *EPA,* 614 Fed. Appx. 517, 2015 U.S. App. LEXIS 16246 (D.C. Cir. 2015).

The August 22, 2013, letter from John Skvarla that DAQ attached to its comments was sent by North Carolina to EPA prior to the D.C. Circuit litigation and raised the same concern regarding the $PM_{2.5}$ increment baseline dates in the 2010 PSD $PM_{2.5}$ Rule that North Carolina raised in the D.C. Circuit litigation. EPA responded to the April 22, 2013, letter from Secretary Skvarla to Administrator McCarthy in conjunction with EPA's August 28, 2014, response to the State's petition for EPA to reconsider or revise the 2010 PSD $PM_{2.5}$ Rule.

In response to DAQ's comments, EPA notes that DAQ does not claim that North Carolina's $PM_{2.5}$ increment provisions satisfy the relevant federal criteria for state PSD programs set forth at 40 CFR 51.166 (as promulgated in the 2010 PSD $PM_{2.5}$ Rule). Rather, DAQ's opposition to EPA's proposed disapproval of North Carolina's $PM_{2.5}$ increment provisions is based entirely on DAQ's claim that the federal $PM_{2.5}$ increment baseline provisions set forth at 40 CFR 51.166 are unlawful. In determining whether to approve North Carolina's $PM_{2.5}$ increment submittal, however, EPA considers only whether North Carolina's proposed SIP revision satisfies the minimum federal criteria set forth at 50 CFR 51.166 and other requirements governing SIP revisions. EPA's action on North Carolina's submittal does not reopen for comment EPA's determination of the appropriate $PM_{2.5}$ increment baselines for SIP-approved PSD programs, which were established in the final 2010 PSD $PM_{2.5}$ Rule published in the **Federal Register** on October 20, 2010 (75 FR 64864).

Under CAA section 307(b)(1), 42 U.S.C. 7607(b)(1), any petition for review of the 2010 PSD $PM_{2.5}$ Rule had to be filed in the D.C. Circuit within 60 days of EPA's publication of the rule in the **Federal Register**, unless such petition is based solely on grounds arising after the 60th day, in which case the petition had to be filed within 60 days after such grounds arose. As the D.C. Circuit explained in dismissing North Carolina's petition for review of the 2010 PSD $PM_{2.5}$ Rule, North Carolina missed the statutory deadline for filing a petition for review of the $PM_{2.5}$ increment baseline provisions set forth in that Rule and did not file its court challenge within 60 days of the *NRDC* court decision that the State alleged to establish "after arising" grounds for such a challenge. *See North Carolina,* 614 Fed. Appx. at 517.[4]

Based on its view of the *NRDC* court decision, North Carolina separately petitioned EPA to reconsider or revise the baseline date in the 2010 PSD $PM_{2.5}$ Rule and subsequently challenged EPA's response to that petition in the D.C. Circuit. EPA determined that revision of the baseline dates for $PM_{2.5}$ in the 2010 rule was not appropriate or compelled by the court decision cited by North Carolina. EPA also considered and responded to the April 22, 2013, letter from Secretary Skvarla in the manner described above. Accordingly, EPA has already given due consideration to the concern raised by North Carolina in its comment regarding the content of the EPA regulations. The Court upheld EPA's response to the State's petition to change the rule. 614 Fed. Appx. at 519.

Thus, the legal issues raised by North Carolina concerning the content of EPA's regulations are settled and not open to reconsideration in this action regarding North Carolina's SIP submittal. For purposes of this action, the $PM_{2.5}$ increment baseline provisions for SIP-approved state PSD programs set forth in 40 CFR 51.166 are final and effective for all states, including North Carolina. EPA is required to apply its regulations as they are presently written. *See, e.g.,* 78 FR 63883, 63885 (Oct. 25, 2013) (EPA action on the Utah SIP based on the terms of the current version of 40 CFR 51.166). Accordingly, DAQ's comments regarding alleged defects in the $PM_{2.5}$ increment baseline dates established in the 2010 PSD $PM_{2.5}$

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[3] The North Carolina Department of Environment and Natural Resources is now the North Carolina Department of Environmental Quality.

[4] In the D.C. Circuit litigation, North Carolina argued that the 2013 *NRDC* decision constituted grounds arising after the 60th day following EPA's publication of the 2010 PSD $PM_{2.5}$ Rule in the **Federal Register**, and therefore started a new 60-day period during which North Carolina could petition the D.C. Circuit to review the 2010 $PM_{2.5}$ PSD Rule. *North Carolina,* 614 Fed. Appx. at 518. The D.C. Circuit found that even if *NRDC* constituted after-arising grounds, "North Carolina brought its petition more than ten months after [the Court] issued *NRDC*—well outside of the sixty-day window for petitions that the after-arising grounds exception [in CAA section 307(b)] provides." *Id.* Therefore, the Court concluded: "Even assuming, without deciding, that *NRDC* constituted after-arising grounds, North Carolina's petition is thus still untimely." *Id.*

Rule (including arguments made in attachments to DAQ's comment submission) are not relevant to EPA's determination in this final action of whether the $PM_{2.5}$ increment provisions in North Carolina's September 5, 2013, SIP submittal are approvable.

To be federally-approvable, North Carolina's $PM_{2.5}$ increment provisions must meet the requirements of 40 CFR 51.166 unless North Carolina can demonstrate that it has alternative measures in its plan other than $PM_{2.5}$ increments that satisfy the PSD requirements under sections 166(c) and 166(d) of the CAA. *See* 40 CFR 51.166(c)(2). Specifically regarding the definitions of key terms set forth at 40 CFR 51.166(b), the regulations state that "[a]ll State plans shall use" these definitions, unless "the State specifically demonstrates that the submitted definition is more stringent, or at least as stringent, in all respects" as the federal definition. *See* 40 CFR 51.166(b). As EPA explained in the NPRM, North Carolina's $PM_{2.5}$ increment provisions at 15A NCAC 02D .0530 do not incorporate the federally required definitions of "major source baseline date," "minor source baseline date," and "baseline area." Nor has North Carolina demonstrated—or even claimed—that alternative definitions in the State's plan are more stringent, or at least as stringent, as the federal definitions set forth at 40 CFR 51.166. Likewise, North Carolina has not identified measures in its plan other than $PM_{2.5}$ increments that satisfy the PSD requirements under sections 166(c) and 166(d) of the CAA and would warrant approval under 40 CFR 51.166(c)(2). DAQ's comments do not refute EPA's determination that North Carolina's $PM_{2.5}$ increment provisions are not in compliance with 40 CFR 51.166. Therefore, EPA disagrees with DAQ's comment that North Carolina's rules can be approved into the SIP as written.

## III. Incorporation by Reference

In this rule, EPA is including in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is incorporating by reference portions of North Carolina's regulations 15A NCAC 02D .0530 and 15A NCAC 02D .0531, entitled "Prevention of Significant Deterioration" and "Sources in Nonattainment Areas," effective September 1, 2013. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.[5] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Final Actions

EPA is approving, in part, and disapproving, in part, changes to the North Carolina SIP provided by the DAQ to EPA on May 16, 2011, (two submittals) and September 5, 2013. These changes modify North Carolina's NSR permitting regulations codified at 15A 02D .0530—*Prevention of Significant Deterioration* and 15A NCAC 02D.0531—*Sources in Nonattainment Areas,* and include the adoption of some federal requirements respecting implementation of the $PM_{2.5}$ NAAQS through the NSR permitting program. Specifically, EPA is approving the State's changes as they relate to the requirements to comply with EPA's 2008 NSR $PM_{2.5}$ Implementation Rule (provided in the first May 16, 2011, SIP submittal and the September 5, 2013, SIP submittal) and the State's miscellaneous changes as described in Section III.C. of the NPRM (provided in the second May 16, 2011, SIP submittal and the September 5, 2013, SIP submittal). EPA is disapproving North Carolina's September 5, 2013, SIP submittal as it relates to the requirements to comply with EPA's 2010 PSD $PM_{2.5}$ Rule. The versions of 15A NCAC 02D .0530 (PSD) and 15A NCAC 02D .0531 (NNSR) that became effective in the State on September 1, 2013, will be incorporated into North Carolina's SIP, with the exception of the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to $PM_{2.5}$ increments. EPA is approving the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to $PM_{10}$.[6] As a result of the disapproval of a portion of the State's NSR requirements, EPA also is disapproving the PSD elements of the North Carolina's infrastructure SIP submittals for the 2008 lead, 2008 8-hour ozone, 2010 $SO_2$, 2010 $NO_2$ and the 2012 $PM_{2.5}$ NAAQS; and is converting the Agency's previous conditional approvals of the PSD elements of North Carolina's infrastructure SIP submittals for the 1997 Annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ NAAQS to partial approvals and partial disapprovals.

North Carolina did not submit its $PM_{2.5}$ increment provisions or its infrastructure SIPs to meet requirements for Part D of the CAA or a SIP call; therefore, EPA's final action to disapprove North Carolina's $PM_{2.5}$ increment provisions and to partially disapprove the PSD portions of the State's infrastructure SIP submittals does not trigger sanctions. However, this final disapproval action does trigger the requirement under section 110(c) for EPA to promulgate a FIP no later than two years from the date of the disapproval unless the State corrects the deficiency through a SIP revision and EPA approves the SIP revision before EPA promulgates such a FIP.[7]

## V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action approves, in part, and disapproves, in part, state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. EPA is determining that the PSD portion of some of the aforementioned SIP submittals do not meet federal requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a

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[5] 62 FR 27968 (May 22, 1997).

[6] As explained in the NPRM (81 FR at 28803, fn. 17), the revisions to paragraphs (e), (q), and (v) provided in North Carolina's September 5, 2013, SIP submittal include $PM_{10}$ increment provisions in addition to $PM_{2.5}$ provisions. Prior to these rule changes, North Carolina had incorporated the $PM_{10}$ increments into 15A NCAC 02D .0530 by reference to the CFR. North Carolina's decision to write the $PM_{10}$ increment requirements directly into its rule rather than to incorporate them by reference does not change the applicable SIP requirements with respect to $PM_{10}$ increments.

[7] EPA expects North Carolina sources that are subject (or become subject) to PSD requirements to continue complying with federal $PM_{2.5}$ increment requirements following this disapproval action, including use of the federally required baseline dates for calculating $PM_{2.5}$ increment consumption.

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: September 6, 2016.

**V. Anne Heard,**

*Acting Regional Administrator, Region 4.*

40 CFR part 52 is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart II—North Carolina

■ 2. Section 52.1770 is amended by:

■ a. In paragraph (c), Table 1, under Subchapter 2D, Section .0500, revising the entries for "Sect .0530" and "Sect .0531".

■ b. In paragraph (e), adding entries for "110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter NAAQS", "110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter NAAQS", "110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS", "110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS", "110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAAQS", "110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $SO_2$ NAAQS" and "110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS" at the end of the table.

The revisions and additions read as follows:

**§ 52.1770 Identification of plan.**

* * * * *

(c) * * *

TABLE 1—EPA APPROVED NORTH CAROLINA REGULATIONS

| State citation | Title/subject | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Subchapter 2D Air Pollution Control Requirements** | | | | |
| * * * * * * * | | | | |
| **Section .0500 Emission Control Standards** | | | | |
| * * * * * * * | | | | |
| Sect .0530 | Prevention of Significant Deterioration. | 9/1/2013 | | Disapproved the portions of paragraphs 15A NCAC 02D .0530(e), (q), and (v) that pertain to $PM_{2.5}$ increments. |
| Sect .0531 | Sources in Nonattainment Areas | 9/1/2013 | 9/14/2016, [Insert citation of publication in ***Federal Register***]. | |
| * * * * * * * | | | | |

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA Approval date | **Federal Register** citation | Explanation |
|---|---|---|---|---|
| * * * * * * * | | | | |
| 110(a)(1) and (2) Infrastructure Requirements for 1997 Fine Particulate Matter NAAQS. | 4/1/2008 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for 2006 Fine Particulate Matter NAAQS. | 9/21/2009 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for the 2008 Lead NAAQS. | 6/15/2012 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone NAAQS. | 11/2/2012 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $NO_2$ NAAQS. | 8/23/2013 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for the 2010 1-hour $SO_2$ NAAQS. | 3/18/2014 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |
| 110(a)(1) and (2) Infrastructure Requirements for the 2012 Annual $PM_{2.5}$ NAAQS. | 12/4/2015 | 9/14/2016 | [Insert citation of publication in **Federal Register**]. | Partially approve the PSD elements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (prong 3) and 110(a)(2)(J) and disapprove with respect to the $PM_{2.5}$ increment requirements of 2010 PSD $PM_{2.5}$ Rule. |

**§ 52.1773 [Removed and Reserved]**

■ 3. Section 52.1773 is removed and reserved.

[FR Doc. 2016–21994 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 63**

**[EPA–HQ–OAR–2006–0790; FRL–9951–64–OAR]**

**RIN 2060–AS10**

## National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of final action on reconsideration.

**SUMMARY:** This action sets forth the Environmental Protection Agency's (EPA's) final decision on the issues for which it announced reconsideration on January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers" (Area Source Boilers Rule). The EPA is retaining the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA is amending three reconsidered provisions regarding: The alternative particulate matter (PM) standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. The EPA is making minor changes to the proposed definitions of startup and shutdown based on comments received. This final action also addresses a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, the EPA is also denying the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

**DATES:** This final rule is effective on September 14, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0790. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA WJC West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Johnson, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; fax number: (919) 541–5450; email address: *johnson.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Acronyms and Abbreviations.* A number of acronyms and abbreviations are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined as follows:

| | |
|---|---|
| ACC | American Chemistry Council |
| AF&PA | American Forest and Paper Association |
| Btu | British thermal unit |
| CAA | Clean Air Act |
| CEMS | Continuous emissions monitoring systems |
| CFR | Code of Federal Regulations |
| CIBO | Council of Industrial Boiler Owners |
| CO | Carbon monoxide |
| CRA | Congressional Review Act |
| EGU | Electric Utility Steam Generating Unit |
| EPA | U.S. Environmental Protection Agency |
| GACT | Generally available control technology |
| HAP | Hazardous air pollutant(s) |
| Hg | Mercury |
| ICI | Industrial, Commercial, and Institutional |
| ICR | Information collection request |
| MACT | Maximum achievable control technology |
| MMBtu/hr | Million British thermal units per hour |
| NAICS | North American Industrial Classification System |
| NESHAP | National Emission Standards for Hazardous Air Pollutants |
| NRDC | Natural Resources Defense Council |
| NSPS | New Source Performance Standards |
| NTTAA | National Technology Transfer and Advancement Act |
| OMB | Office of Management and Budget |
| PM | Particulate matter |
| ppm | Parts per million |
| PRA | Paperwork Reduction Act |
| RFA | Regulatory Flexibility Act |
| The Court | United States Court of Appeals for the District of Columbia Circuit |
| TSM | Total selected metals |
| UMRA | Unfunded Mandates Reform Act |
| U.S.C. | United States Code |
| WWW | World Wide Web |

*Organization of This Document.* The following outline is provided to aid in locating information in this preamble.

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## I. General Information

### *A. Does this action apply to me?*

Categories and entities potentially affected by this reconsideration action include those listed in Table 1 of this preamble.

TABLE 1—REGULATED ENTITIES

| Category | North American Industrial Classification System (NAICS) code | Examples of potentially regulated entities |
|---|---|---|
| Any area source facility using a boiler as defined in the final rule. | 321 | Manufacturers of lumber and wood products. |
| | 11 | Agriculture, greenhouses. |
| | 311 | Food manufacturing. |
| | 327 | Nonmetallic mineral product manufacturing. |
| | 424 | Wholesale trade, nondurable goods. |
| | 531 | Real estate. |
| | 611 | Educational services. |
| | 813 | Religious, civic, professional, and similar organizations. |
| | 92 | Public administration. |
| | 722 | Food services and drinking places. |
| | 62 | Health care and social assistance. |
| | 22111 | Electric power generation. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final action. To determine whether your facility would be affected by this final action, you should examine the applicability criteria in 40 CFR 63.11193 of subpart JJJJJJ. If you have any questions regarding the applicability of this final action to a particular entity, consult either the air permitting authority for the entity or your EPA Regional representative as listed in 40 CFR 63.13 (General Provisions).

### *B. How do I obtain a copy of this document and other related information?*

The docket number for this final action regarding the Area Source Boilers Rule (40 CFR part 63, subpart JJJJJJ) is Docket ID No. EPA–HQ–OAR–2006–0790.

In addition to being available in the docket, an electronic copy of this document will also be available on the World Wide Web (WWW). Following signature, a copy of this document will be posted at *https://www3.epa.gov/ttn/atw/boiler/boilerpg.html.*

### *C. Judicial Review*

Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by November 13, 2016. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

## II. Background Information

On March 21, 2011, the EPA established final emission standards for control of hazardous air pollutants (HAP) from industrial, commercial, and institutional (ICI) boilers located at area sources of HAP—the Area Source Boilers Rule (76 FR 15554). On February 1, 2013, the EPA promulgated final amendments to the Area Source Boilers Rule (78 FR 7488). Following that action, the Administrator received three petitions for reconsideration that identified certain issues that petitioners claimed warranted further opportunity for public comment.

The EPA received a petition dated April 1, 2013, from the American Forest and Paper Association (AF&PA), on their behalf and on behalf of the American Wood Council, National Association of Manufacturers, Biomass Power Association, Corn Refiners Association, National Oilseed Processors Association, Rubber Manufacturers Association, Southeastern Lumber Manufacturers Association and the U.S. Chamber of Commerce. The EPA received a petition dated April 2, 2013, from the Council of Industrial Boiler Owners (CIBO) and the American Chemistry Council (ACC). Finally, the EPA received a petition dated April 2, 2013, from Earthjustice, on behalf of the Sierra Club, Clean Air Council, Partnership for Policy Integrity, Louisiana Environmental Action Network and the Environmental Integrity Project.

In response to the petitions, the EPA reconsidered and requested comment on five provisions of the February 1, 2013, final amendments to the Area Source Boilers Rule. The EPA published the proposed notice of reconsideration in the **Federal Register** on January 21, 2015 (80 FR 2871).

In this rulemaking, the EPA is taking final action with respect to the five issues raised by petitioners in their petitions for reconsideration on the 2013 final amendments to the Area Source Boilers Rule and for which reconsideration was granted. Section III of this preamble presents the EPA's final decision on these issues and discusses our rationale for the decisions. Additionally, the EPA is finalizing the technical corrections and clarifications that were proposed to correct inadvertent errors in the final rule and to provide the intended accuracy, clarity, and consistency. Most of the corrections and clarifications remain the same as described in the proposed notice of reconsideration on January 21, 2015, and those changes are being finalized without further discussion. However, the EPA has refined its approach to some issues in this final rule after consideration of the public comments received on the proposed notice of reconsideration. The changes are to clarify applicability and implementation issues raised by the commenters and are discussed in section IV of this preamble. For a complete summary of the comments received and our responses thereto, please refer to the document "Response to 2015 Reconsideration Comments for Industrial, Commercial, and Institutional Boilers at Area Sources: National Emission Standards for Hazardous Air Pollutants" located in the docket.

## III. Summary of Final Action on Issues Reconsidered

The five reconsideration issues for which amendments are being finalized in this rulemaking are: (1) Definitions of startup and shutdown; (2) alternative PM standard for new oil-fired boilers that combust low-sulfur oil; (3) establishment of a subcategory and separate requirements for limited-use boilers; (4) provision that eliminates further performance testing for PM for certain boilers based on their initial compliance test; and (5) provision that eliminates further fuel sampling for Hg for certain coal-fired boilers based on their initial compliance demonstration. Each of these issues is discussed in detail in the following sections of this preamble.

### *A. Definitions of Startup and Shutdown*

In the February 1, 2013, final amendments to the Area Source Boilers Rule, the EPA finalized revisions to the definitions of startup and shutdown, which were based on the time during which fuel is fired in the affected unit for the purpose of supplying steam or heat for heating and/or producing electricity or for any other purpose. Petitioners asserted that the public lacked an opportunity to comment on the amended definitions and that the definitions were not sufficiently clear. In response to these petitions, in the January 21, 2015, proposed notice of reconsideration (80 FR 2871), we solicited comment on the definitions of startup and shutdown that were promulgated in the February 2013 final rule as well as additional revisions we proposed to make to those definitions. Specifically, we proposed to revise the February 2013 definition of startup to include an alternate definition of startup. The alternate definition clarified when startup begins for new boilers to address pre-startup testing activities that are done as part of installing a new boiler and when startup ends for first-ever startups as well as startups occurring after shutdown events. The alternate definition of startup as well as the definition of shutdown incorporated a new term "useful thermal energy" to replace the term "steam and heat" to address petitioners' concerns of an ambiguous end of the startup period.

In this action, the EPA is adopting two alternative definitions of "startup," consistent with the proposed rule. The first definition defines "startup" to mean the first-ever firing of fuel, or the firing of fuel after a shutdown event, in a boiler for the purpose of supplying useful thermal energy for heating and/

or producing electricity or for any other purpose. Under this definition, startup ends when any of the useful thermal energy from the boiler is supplied for heating, producing electricity, or any other purpose. The EPA is also adopting an alternative definition of "startup" which defines the period as beginning with the first-ever firing of fuel, or the firing of fuel after a shutdown event, in a boiler for the purpose of supplying useful thermal energy for heating, cooling, or process purposes or for producing electricity, and ending 4 hours after the boiler supplies useful thermal energy for those purposes.

In the February 1, 2013, final rule, the EPA defined "shutdown" to mean the cessation of operation of a boiler for any purpose, and said this period begins either when none of the steam or heat from the boiler is supplied for heating and/or producing electricity or for any other purpose, or when no fuel is being fired in the boiler, whichever is earlier. The EPA received petitions for reconsideration of this definition, asking that the agency clarify the term. The EPA proposed a definition of "shutdown" in January 2015 which clarified that shutdown begins when the boiler no longer makes useful thermal energy (rather than referring to steam or heat supplied by the boiler) for heating, cooling, or process purposes or generates electricity, or when no fuel is being fed to the boiler, whichever is earlier. In this action, the EPA is adopting a definition of "shutdown" that is consistent with the proposal, with some minor clarifying revisions. "Shutdown" is defined to begin when the boiler no longer supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, or when no fuel is being fed to the boiler, whichever is earlier. Under this definition, shutdown ends when the boiler no longer supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, and no fuel is being combusted in the boiler.

The EPA received several comments on the proposed definitions of "useful thermal energy," "startup," and "shutdown."

### 1. Useful Thermal Energy

Several commenters supported the amended definitions of startup and shutdown that include the concept of useful thermal energy, which recognizes that small amounts of steam or heat may be produced when starting up a unit, but the amounts would be insufficient to operate processing equipment and insufficient to safely initiate pollution controls.

One commenter requested that the EPA add the term "flow rate" to the definition of useful thermal energy, consistent with discussion in the preamble to the proposed notice of reconsideration (80 FR 2874). The EPA recognizes the importance of flow rate as a parameter for determining when useful thermal energy is being supplied by a boiler and has added this term to the definition of useful thermal energy in the final rule.

### *2. Startup*

One commenter stated that work practice standards are allowed only if pollution is not emitted through a conveyance or the application of measurement methodology to a particular class of sources is not practicable, and the EPA has not stated either of these to be the case. The commenter also claimed that, because the EPA has changed and extended startup and shutdown periods, the EPA must determine that emissions measurement is impracticable during startup and shutdown as they are now defined, which the EPA has not done.

The EPA recognizes the unique characteristics of ICI boilers and has retained the alternate definition, which incorporates the term "useful thermal energy" in the final rule, with some slight adjustments, as discussed previously. Contrary to the commenter's assertion, the EPA did make a determination under CAA section 112(h) that it is not feasible to prescribe or enforce a numeric emission standard during periods of startup and shutdown because the application of measurement methodology is impracticable due to technological and economic limitations. Specifically, the March 2011 final rule required a work practice standard for coal-fired boilers during periods of startup and shutdown. See 76 FR 15576–15577. Test methods are required to be conducted under isokinetic conditions (*i.e.*, steady-state conditions in terms of exhaust gas temperature, moisture, flow rate) which are difficult to achieve during these periods of startup and shutdown where conditions are constantly changing. Moreover, accurate HAP data from those periods are unlikely to be available from either emissions testing (which is designed for periods of steady state operation) or monitoring instrumentation such as continuous emissions monitoring systems (CEMS) (which are designed for measurements occurring during periods other than during startup or shutdown when emissions flow are stable and consistent). Upon review of this information, the EPA determined that it is not feasible to require stack testing during periods of startup and shutdown due to physical limitations and the short duration of startup and shutdown periods. Based on these specific facts for coal-fired boilers in the boilers source category, the EPA established a separate work practice standard for startup and shutdown periods.[1] The Court of Appeals recently approved the EPA's approach to developing a start-up work practice and to making a (non)feasibility determination in *United States Sugar Corp* v. *EPA* (No. 11–1108, D.C. Cir., July 29, 2016) (slip op. at 155). We continue to conclude that testing is impracticable during periods of startup and shutdown as those terms are defined in this final action. We set standards based on available information as contemplated by CAA section 112. Compliance with the numeric emission limits (*i.e.*, PM, Hg, and carbon monoxide (CO)) is demonstrated by conducting performance stack tests. The revised definitions of startup and shutdown better reflect when steady-state conditions are achieved, which are required to yield meaningful results from current testing protocols.

Several commenters agreed with the EPA that startup "should not end until such time that all control devices have reached stable conditions" (*see* 80 FR 2875, column 2), but questioned the EPA's analysis of data from electric utility steam generating units (EGUs) to determine the alternate startup definition and disagreed with the EPA's conclusion that 4 hours is an appropriate length of time for startup. The commenters stated that a work practice approach during startup and shutdown is appropriate and should be site-specific due to the many designs and applications of industrial boilers. One commenter provided information obtained from an informal survey of its members for 76 units on the time needed to reach stable conditions during startup (CIBO data).

As stated in the January 2015 proposal, the EPA had very limited information specifically for industrial boilers on the hours needed for controls to reach stable conditions after the start of supplying useful thermal energy.

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[1] Coal-fired boilers are the only subcategory for which we set maximum achievable control technology (MACT)-based standards. The requisite findings under CAA section 112(h) for work practices are only necessary for the large coal-fired boiler subcategory. For large new oil-fired and biomass-fired boilers, the EPA set generally available control technology (GACT) management practice standards under CAA section 112(d)(5). The provisions of CAA section 112(h) do not apply to setting GACT standards.

However, the EPA did have information for EGUs on the hours to stable control operation after the start of electricity generation. Given that the startup provisions need to be based on "best performers," we found that controls used on the best performing 12-percent EGUs reach stable operation within 4 hours after the start of electricity generation. Since the types of controls used on EGUs are similar to those used on industrial boilers and the start of electricity generation is similar to the start of supplying useful thermal energy, we continue to believe that the controls on the best performing industrial boilers would also reach stable operation within 4 hours after the start of supplying useful thermal energy and have included this timeframe in the final alternate definition. This conclusion was supported by the limited information (13 units) the EPA had on industrial boilers and by CIBO data (76 units).[2]

One commenter suggested that the first definition of startup be revised to incorporate the term "useful thermal energy" to clarify that startup has ended when the boiler is supplying steam or heat at the proper temperature, pressure, and flow to the energy use systems being served, not immediately after supplying any amount of heat for any incidental purpose.

The EPA has adjusted the first definition of startup to replace "steam or heat" with "useful thermal energy (such as steam or hot water)" consistent with the terminology in the alternate definition. Additionally, the term "useful thermal energy" was revised to incorporate a minimum flow rate to more appropriately reflect when the energy is provided for any primary purpose of the unit. Together, these changes alleviate the concerns of when the startup period functionally ends. Boilers should be considered to be operating normally at all times energy (*i.e.*, steam or hot water) of the proper pressure, temperature, and flow rate is being supplied to a common header system or energy user(s) for use as either process steam or for the cogeneration of electricity.

### 3. Shutdown

Multiple commenters supported the EPA's proposed definition of shutdown. One commenter noted the revised definition's accommodation of the fact that combustion does not end when the fuel feed is turned off in a grate system because fuel remaining on a grate continues to combust although fuel has been cut off. To further clarify that the shutdown period begins when no useful steam or electricity is generated, or when fuel is no longer being combusted in the boiler, the EPA has adjusted the definition of shutdown to replace the phrase "makes useful thermal energy" to "supplies useful thermal energy." The term "supplies" best serves the intended meaning of the definition of shutdown and, in addition, is consistent with the definition of startup.

### *B. Alternative PM Standard for New Oil-Fired Boilers That Combust Low-Sulfur Oil*

In the February 1, 2013, final amendments to the Area Source Boilers Rule, the EPA added a new provision that specifies that certain new or reconstructed oil-fired boilers with heat input capacity of 10 million British thermal units per hour (MMBtu/hr) or greater that combust low-sulfur oil meet GACT for PM, providing the type of fuel combusted is monitored and recorded on a monthly basis. Specifically, the provision applies to boilers combusting only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a PM emission limit under this subpart and that do not use a post-combustion technology (except a wet scrubber) to reduce PM or sulfur dioxide emissions. The EPA received a petition asserting that the public lacked an opportunity to comment on the new provision for low-sulfur liquid burning boilers as well as the definition of low-sulfur liquid fuel. In response to the petition, in the January 21, 2015, proposal, we solicited comment on the February 2013 provision, as well as on (1) whether and, if so, to what extent, burning low-sulfur liquid fuels, as defined under the final rule, would control the urban metal HAP for which the category of sources was listed and for which PM serves as a surrogate (*i.e.*, Hg, arsenic, beryllium, cadmium, lead, chromium, manganese, nickel) and (2) whether the final rule's definition of low-sulfur would allow emissions to exceed the final rule's emission limit for PM (*i.e.*, 0.03 pound (lb)/MMBtu).

We also solicited comment on an alternative PM standard for new oil-fired boilers that combust "ultra-low-sulfur liquid fuel," which would be defined as fuel containing no more than 15 parts per million (ppm) sulfur, citing the threshold in the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (RICE NESHAP) and the National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (Boiler MACT). Specifically, we requested comment on an alternative provision to the February 2013 final rule's alternative PM standard for new oil-fired boilers that combust low-sulfur oil that would specify that new or reconstructed oil-fired boilers with heat input capacity of 10 MMBtu/hr or greater that combust only ultra-low-sulfur liquid fuel meet GACT for PM providing the type of fuel combusted is monitored and recorded on a monthly basis. We also requested comment on whether and, if so, to what extent burning ultra-low-sulfur liquid fuels (*i.e.*, distillate oil that has less than or equal to 15 ppm sulfur) would control the urban metal HAP for which the category of sources were listed.

In this action, the EPA is finalizing an alternative PM standard for new oil-fired boilers that combust ultra-low-sulfur liquid fuel, as described immediately above and in the January 2015 proposal, in place of the February 2013 final rule's alternative PM standard for new oil-fired boilers that combust low-sulfur oil, as discussed later in this section of the preamble.

Several commenters agreed with the provision that specifies that boilers combusting low-sulfur oil meet GACT for PM, consistent with the exemption for low-sulfur oil burning boilers in 40 CFR part 60, subpart Dc. One commenter asserted that PM emissions from oil-fired boilers are a function of the sulfur content of the fuel and, because low-sulfur oil has lower PM than high sulfur oil, it necessarily has lower HAP as well. However, another commenter, reiterating many points made in its petition for reconsideration on this topic, asserted that the alternative PM standard for new oil-fired boilers that combust low-sulfur oil is unlawful and arbitrary because the EPA has not shown that the use of low-sulfur liquid fuels will provide meaningful reductions of the urban metal HAP for which area source boilers were listed under CAA section 112(c)(3), and, therefore, its use cannot be GACT.

Two commenters disagreed with the alternative PM standard for new oil-fired boilers that combust low-sulfur oil, as defined in the Area Source Boilers Rule (*i.e.*, oil that contains no more than 0.50 weight percent sulfur). The commenters suggested that fuel oils with a sulfur content of 0.50 weight percent correspond to residual oils, which are associated with higher HAP emissions. The commenters claimed that the rule's definition of low sulfur is too lenient and that boilers combusting fuel oils with 0.50 weight percent sulfur may have PM emissions that exceed the PM emission limit. One of the commenters provided data showing a range of PM emissions between 0.035 to 0.062 lb/MMBtu for four boilers burning oil containing 0.5 weight percent sulfur. On the contrary, one commenter provided graphs of PM emissions data for oil-fired boilers indicating that most of the PM emissions from the boilers burning #2 oil were below the PM emission limit of 0.03 lb/MMBtu.

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[2] *See* EPA's July 2016 memorandum, "Assessment of Startup Period for Industrial Boilers," available in the rulemaking docket (Docket ID No. EPA–HQ–OAR–2006–0790).

Several commenters supported an alternative PM standard for new oil-fired boilers combusting ultra-low-sulfur fuels containing no more than 15 ppm sulfur. Another commenter argued that the EPA must show that the use of ultra-low-sulfur liquid fuels will substantially reduce emissions of the urban metal HAP for which area source boilers were listed. The commenter noted that the EPA's finding that use of ultra-low-sulfur fuel significantly reduces emissions of hazardous metals when used in engines, as referenced in the January 2015 proposal, does not support such a conclusion with regard to use of ultra-low-sulfur fuel in area source boilers.

Based on our review of data in the record, additional data obtained from public sources, and public comments, the EPA is finalizing an alternative PM standard that specifies that new or reconstructed oil-fired boilers with heat input capacity of 10 MMBtu/hr or greater that combust only ultra-low-sulfur liquid fuel meet GACT for PM providing the type of fuel combusted is monitored and recorded on a monthly basis. If the source intends to burn a fuel other than ultra-low-sulfur liquid fuel or gaseous fuels as defined in 40 CFR part 63, subpart JJJJJJ, they are required to conduct a performance test within 60 days of burning the new fuel. New or reconstructed oil-fired boilers that commenced construction or reconstruction on or before publication of this final action and that are currently meeting the alternative PM standard for low-sulfur oil burning boilers are provided 3 years from publication of this action before becoming subject to the PM emission limit, providing them time to decide how to comply (*i.e.,* combust only ultra-low-sulfur liquid fuel or conduct a performance test demonstrating compliance).

We have determined that PM emissions from boilers firing liquid fuels containing 0.50 weight percent sulfur as allowed under the February 2013 alternative PM standard may exceed the Area Source Boilers Rule PM limit for oil-fired boilers of 0.03 lb/MMBtu, but that PM emissions from boilers firing liquid fuels containing equal to or less than 15 ppm sulfur (*i.e.,* ultra-low-sulfur liquid fuel) will not exceed the PM limit. A review of information regarding liquid fuel sulfur content and PM emissions levels in the records for the boiler rules found that of the 10 liquid fuel area source boilers that reported PM emissions that exceeded the PM limit in their information collection request (ICR) responses, none fired liquid fuel with sulfur content less than 15 ppm. However, one boiler with emissions exceeding the PM limit (*i.e.,* 0.061 lb/MMBtu) reported that the level of sulfur in their fuel was 0.2 weight percent, a level that is above 15 ppm (0.0015 weight percent), but below the low-sulfur liquid fuel threshold of 0.50 weight percent in the 2013 final rule. Based on these data, along with comments indicating that boilers burning oil containing 0.50 percent sulfur can emit PM at levels above the PM limit, the EPA concludes that the rule's definition of low-sulfur (*i.e.,* 0.50 weight percent) would potentially allow emissions exceeding the PM emission limit, but that boilers burning oil containing no more than 15 ppm sulfur would not emit PM at levels above the PM limit.

In addition, we have determined that burning ultra-low-sulfur liquid fuel controls urban metal HAP. The ultra-low-sulfur liquid fuel threshold of 15 ppm sulfur we are adopting in the final Area Source Boilers Rule is consistent with the sulfur threshold in the Boiler MACT that allows for a reduced PM (or, alternatively, total selected metals (TSM)) testing frequency for light liquid boilers. Further, the PM emission limit for light liquid boilers at major sources is significantly lower than the limit for area source oil-fired boilers (0.0079 lb/MMBtu (existing units) and 0.0011 lb/MMBtu (new units) instead of 0.03 lb/MMBtu). A review of available information for major source boilers burning ultra-low-sulfur liquid fuel identified one major source facility that reported fuel analyses for TSM (*i.e.,* arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, and selenium) and Hg, and those fuel analyses showed that each boiler had TSM and Hg emissions below detection limits and the applicable Boiler MACT TSM and Hg emission limits. The fact that boilers burning ultra-low-sulfur liquid fuel have the ability to meet the TSM and Hg limits based on the best-performing major source boilers provides sound support for our determination that the use of ultra-low-sulfur liquid fuel in area source boilers will reduce emissions of urban metal HAP.

A detailed discussion of our findings is included in the "Response to 2015 Reconsideration Comments for Industrial, Commercial, and Institutional Boilers at Area Sources: National Emission Standards for Hazardous Air Pollutants" located in the docket.

### *C. Establishment of a Subcategory and Separate Requirements for Limited-Use Boilers*

In the February 1, 2013, final amendments to the Area Source Boilers Rule, the EPA established a limited-use boiler subcategory that includes any boiler that burns any amount of solid or liquid fuels and has a federally enforceable average annual capacity factor of no more than 10 percent. Separate requirements for this subcategory of boilers that operate on a limited basis were also established. Specifically, limited-use boilers are required to complete a tune-up every 5 years. The EPA received a petition asserting that the public lacked an opportunity to comment on the new limited-use boiler subcategory, as well as the tune-up requirement established for the new subcategory. In response to the petition, in the January 21, 2015, proposal, we solicited comment regarding whether the separate requirements for a limited-use boiler subcategory are necessary or appropriate. The EPA is retaining the limited-use boiler subcategory and its separate requirements, as discussed later in this section of the preamble.

Multiple commenters agreed that separate requirements for limited-use boilers are appropriate. One commenter asserted that limited-use boilers qualify for subcategorization due to unique operating characteristics that merit class and type distinctions allowed under CAA section 112(d)(1). Two commenters explained that these units spend a larger percentage of time starting up and shutting down than regular-use boilers which causes their emissions profiles to be different, and many pollution control technologies are difficult to use or ineffective during startup and shutdown and would be cost-prohibitive to install and use. One commenter stated that the designation of a limited-use boiler subcategory is appropriately consistent with the similar subcategory for seasonal boilers. Several commenters stated that a limited-use boiler subcategory is appropriately consistent with the similar limited-use subcategory in the Boiler MACT.

Multiple commenters supported the 5-year tune-up requirement for limited-use boilers. Two commenters stated that it would be illogical to require such boilers to comply with the same tune-up schedule as other boilers, which is every 2 years, given their limited operational time and intermittent operating schedules. One commenter claimed that more frequent tune-ups would not provide any meaningful environmental benefits given the limited operating profiles of limited-use units, noting that despite the 5-year tune-up frequency, limited-use boilers will still conduct tune-ups after less operating time than boilers in other subcategories.

One commenter objected to the EPA's decision to create a separate subcategory for these boilers and for requiring nothing more than one tune-up every 5 years for these boilers. The commenter stated that the limited-use boilers subcategory is unlawful and arbitrary because the EPA is not distinguishing between different classes, types, or sizes of sources and has not explained why boilers operating for fewer total hours during the year is a distinction that requires differential treatment. The commenter further stated that infrequent tune-ups are neither a control technology nor a management practice that will reduce emissions and that nothing in the record demonstrates that the requirement to conduct a tune-up every 5 years will actually reduce emissions of HAP. The commenter asserted that in light of the determination that more frequent tune-ups are GACT for other area boilers, it is unlawful and arbitrary for the EPA to require tune-ups for limited-use boilers only every 5 years.

The EPA has retained the subcategory and separate requirements for limited-use boilers as finalized in the February 2013 final rule. We disagree with the comments objecting to the limited-use boiler subcategory and the requirement that limited-use boilers complete a tune-up every 5 years. The EPA has concluded that limited-use boilers are a unique class of unit based on the unique way in which they are used (*i.e.,* they operate for unpredictable periods of time, limited hours, and at less than full load in many cases) and has determined that regulating these units with periodic tune-up work practice and management practice requirements will limit HAP by ensuring that these units operate at peak efficiency during the limited hours that they do operate. In the preamble to the June 4, 2010, proposed standards for area source boilers, the EPA explained that a boiler tune-up provides potential savings from energy efficiency improvements and pollution prevention, and that improvement in energy efficiency results in decreased fuel use which results in a corresponding decrease in emissions (both HAP and non-HAP) from the boiler (75 FR 31908). Specifically, for any boiler conducting a tune-up, a 1-percent gain in combustion efficiency was estimated, resulting in an estimated 1-percent emissions reduction of all pollutants.[3]

The EPA continues to conclude, as previously stated in the February 2013 final rule, that establishing a limited-use subcategory was reasonable. First, we pointed out that it is technically infeasible to test these limited-use boilers since these units serve as back-up energy sources and their operating schedules can be intermittent and unpredictable. Next, we pointed out that boilers that operate no more than 10 percent of the year (*i.e.,* a limited-use boiler) would operate for no more than 6 months in between tune-ups on a 5-year tune-up cycle. We then explained that the brief period of operations for these limited-use boilers is even less than the number of operating months that seasonal boilers and full-time boilers will operate between tune-ups. Finally, we noted that the irregular schedule of operations also makes it difficult to schedule more frequent tune-ups.

### *D. Establishment of a Provision That Eliminates Further Performance Testing for PM for Certain Boilers Based on Their Initial Compliance Test*

In the February 1, 2013, final amendments to the Area Source Boilers Rule, the EPA added a new provision that specifies that further PM emissions testing does not need to be conducted if, when demonstrating initial compliance with the PM emission limit, the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit. The EPA received a petition asserting that the public lacked opportunity to comment on the new provision that eliminates further performance testing for PM for certain boilers based on their initial compliance test. In response to the petition, in the January 21, 2015, proposal, we solicited comment on the February 2013 provision, specifically requesting comment and supporting information on the magnitude and range of variability in PM and urban metal HAP emissions from individual boilers. More specifically, we requested comment on whether the emissions variability at an individual boiler could result in an exceedance of the PM limit by such boiler whose PM emissions are demonstrated to be equal to or less than half of the PM emission limit (*i.e.,* a doubling or more of PM emissions). We also requested comment on whether a requirement to burn only the fuel types and mixtures used to demonstrate that a boiler's PM emissions are equal to or less than half of the PM limit would limit PM emissions variability.

The EPA also solicited comment on an alternative provision that would specify less frequent performance testing for PM based on the initial compliance test. Instead of eliminating further PM performance testing, the alternative provision would specify that when demonstrating initial compliance with the PM emission limit, if the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit, additional PM emissions testing would not need to be conducted for 5 years. We stated that, in such instances, the owner or operator would be required to continue to comply with all applicable operating limits and monitoring requirements. We requested comment on also including a requirement that the owner or operator only burn the fuel types and fuel mixtures used to demonstrate that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit.

In this action, the EPA is finalizing the alternative provision that requires further PM performance testing every 5 years for certain boilers based on their initial compliance test, as described immediately above and in the January 2015 proposal, in place of the February 2013 final rule's provision that eliminated further PM performance testing for such boilers, as discussed later in this section of the preamble. As also discussed in this section of the preamble, we are finalizing a requirement that a PM performance test must be conducted if the owner or operator decides to use a fuel type, other than ultra-low-sulfur liquid fuel or gaseous fuels, that was not used when demonstrating that the PM emissions from their boiler were equal to or less than half of the PM emission limit.

Several commenters agreed with the provision that eliminates further PM performance testing when initial compliance tests show that PM emissions are equal to or less than half of the limit and that requires the owner or operator to continue to comply with all applicable operating limits and monitoring requirements. One commenter agreed with the provision eliminating further PM performance testing as long as the owner or operator is required to burn only the fuel types and mixtures used during the initial testing. Two commenters noted that the provision promotes good PM performance from new boilers while acknowledging that some boilers are inherently low-emitting and should be spared the expense of ongoing performance testing where operations remain consistent. One commenter stated that by setting the threshold at equal to or less than half of the emission limit, there is sufficient buffer against the limit to account for any variability in emission levels, and added that because the unit must continue to comply with operating limits and monitoring requirements, there are safeguards to ensure there are no changes in operation of the boiler or air pollution control equipment that could increase emissions. Another commenter claimed that the provision is in line with other MACT standards and new source performance standards (NSPS) which require only one initial performance test unless there is a physical change to the control device, and added that HAP emissions change only when operating parameters change or when design changes occur.

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[3] "Revised Methodology for Estimating Impacts from Industrial, Commercial, Institutional Boilers at Area Sources of Hazardous Air Pollutant Emissions" (Docket entry: EPA–HQ–OAR–2006–0790–2314).

Two commenters objected to the provision that eliminates further PM performance testing when initial compliance tests show that PM emissions are equal to or less than half of the limit. One commenter claimed that there are no requirements to prevent the facility from changing the fuel type and fuel mixture from those used in the initial compliance testing and a change in fuel type or mixture could result in an increase in PM emissions. Another commenter asserted that it is arbitrary to conclude that a source that measures low emissions in one test will have emissions below the limit thereafter. The commenter claimed that many boilers burn combinations of fuels of varying proportions (*e.g.*, biomass and coal), and because sources are allowed to change their fuel mix within a given fuel type and to change their fuel supplier without changing subcategories, PM emissions from an individual source are likely to be highly variable. The commenter further noted that the EPA has routinely acknowledged the variability inherent in industrial boiler emissions, and that EPA data demonstrate that PM emissions from boilers are highly variable.

For the same reasons, these two commenters also objected to the alternative provision that would require less frequent (once every 5 years) PM performance testing when initial compliance tests show that PM emissions are equal to or less than half of the limit in lieu of totally eliminating further PM performance testing. One commenter, however, provided an alternative recommendation that eliminates further PM testing as long as sources whose initial compliance testing showed PM emissions equal to or less than half of the limit continue to combust the same fuel type and mixture used during the initial compliance testing. Under the commenter's alternative, if the source elects to change the fuel type or mixture being combusted, the source would be required to demonstrate compliance with the PM emission limit no more than 60 days after the change in fuel type or mixture.

Based on our review of the public comments and data available on PM and metallic HAP emissions for which PM serves as a surrogate, the EPA is finalizing the provision that specifies that further PM emissions testing does not need to be conducted for 5 years if, when demonstrating initial compliance with the PM emission limit, the performance test results show that the PM emissions from the affected boiler are equal to or less than half of the applicable PM emission limit. In such instances, the owner or operator would be required to continue to comply with all applicable operating limits and monitoring requirements. If the source burns a new type of fuel other than ultra-low-sulfur liquid fuel or gaseous fuels, then a new performance test is required within 60 days of burning the new fuel type. New or reconstructed boilers that commenced construction or reconstruction on or before publication of this final action and that previously demonstrated that their PM emissions were equal to or less than half of the PM emission limit are provided 5 years from publication of this action before they are required to conduct a performance test unless a new type of fuel, other than ultra-low-sulfur liquid fuel or gaseous fuels, is burned. In that situation, a new performance test is required within 60 days of burning the new fuel type. Boilers with test results that show that PM emissions are greater than half of the PM emission limit are required to conduct PM testing every 3 years.

We have concluded that a provision that reduces the frequency of testing, rather than eliminates further testing, is more appropriate and environmentally protective for long-term compliance with the PM emission limit, but still provides compliance flexibility for low-emitting boilers. A review of PM emissions information in the records for the boiler rules identified several instances where PM emissions variability at an individual major source boiler was such that the minimum test average was below half of the Area Source Boilers Rule PM emission limit and the maximum test average was above the emission limit. Specifically, of 40 coal-fired major source boilers with multiple PM test events, four had such an instance. An investigation into urban metal HAP emission variability informed the EPA that metallic HAP emissions from individual boilers, for which PM serves as a surrogate, can vary and further supports our conclusion that periodic testing is necessary to provide compliance assurance that changes in operation of the boiler or air pollution control equipment have not increased PM emissions. Examination of the variability in non-Hg metallic HAP emissions at individual boilers showed average ratios of maximum emission rates to minimum emission rates for major source boilers with multiple test results for TSM to be 2.79 for biomass-fired boilers and 2.55 for coal-fired boilers, and showed emission ratios for cadmium and lead for several biomass-fired area source boilers with multiple test results that ranged from 1.00 to 7.28 for cadmium and 1.00 to 6.40 for lead. Because PM is a surrogate for Hg for biomass- and oil-fired area source boilers, Hg variability at individual boilers was also examined, showing emission ratios of 4.6 for an area source biomass-fired boiler with multiple Hg fuel analysis samples and 3.2 and 16.2 for area source biomass-fired boilers with multiple Hg performance tests.

The January 2015 proposal requested comment on whether a requirement to burn only the fuel types and mixtures used to demonstrate that a boiler's PM emissions are equal to or less than half of the PM limit would limit PM emissions variability and also requested comment on including such a requirement. For the same reasons the EPA concluded that periodic testing (*i.e.*, every 5 years) for these low-emitting boilers is necessary to provide long-term compliance assurance (*i.e.*, the intra-unit variability in PM and metal HAP emissions identified based on a review of the public comments and available data), we have concluded that introduction of a new fuel type, other than ultra-low-sulfur liquid fuel or gaseous fuels, in between the 5-year tests requires a new performance test within 60 days of burning a new fuel type. 40 CFR 63.11212(c) requires that performance stack tests be conducted while burning the type of fuel or mixture of fuels that have the highest emissions potential for each regulated pollutant. The burning of a new fuel type, whether alone or in a mixture of fuels, could potentially increase emissions. Thus, we believe that this new requirement to test when a new fuel type is burned, along with the requirement in 40 CFR 63.11212(c) to test while burning the type of fuel or mixture of fuels that have the highest emissions potential, will limit PM emissions variability.

A detailed discussion of our findings is included in the ''Response to 2015 Reconsideration Comments for Industrial, Commercial, and Institutional Boilers at Area Sources: National Emission Standards for Hazardous Air Pollutants'' located in the docket.

### *E. Establishment of a Provision That Eliminates Further Fuel Sampling for Mercury for Certain Coal-Fired Boilers Based on Their Initial Compliance Demonstration*

In the February 1, 2013, final amendments to the Area Source Boilers Rule, the EPA added a new provision that specifies that further fuel analysis sampling does not need to be conducted if, when demonstrating initial compliance with the Hg emission limit based on fuel analysis, the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit. The EPA received a petition asserting that the public lacked an opportunity to comment on the new provision that eliminates further fuel sampling for Hg for certain coal-fired boilers based on their initial compliance demonstration. In response to the petition, in the January 21, 2015, proposal, we solicited comment on the February 2013 provision, specifically requesting comment and supporting information on the magnitude and range of variability in Hg content in coal that is likely to be combusted in an individual boiler. More specifically, we requested comment on whether the variability within a specific fuel type or fuel mixture could result in an exceedance of the Hg limit by a boiler in the coal subcategory whose Hg content in their fuel or fuel mixture are demonstrated to be equal to or less than half of the Hg emission limit (*i.e.,* a doubling or more of Hg emissions).

The EPA also solicited comment on an alternative provision that would specify less frequent fuel analysis sampling for Hg based on the initial compliance demonstration. Instead of eliminating further fuel analysis sampling for Hg, the alternative provision would specify that when demonstrating initial compliance with the Hg emission limit based on fuel analysis, if the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit, additional fuel analysis sampling for Hg would not need to be conducted for 12 months. We stated that, in such instances, the owner or operator would be required to continue to comply with all applicable operating limits and monitoring requirements, which include only burning the fuel types and fuel mixtures used to demonstrate compliance and keeping monthly records of fuel use.

In this action, the EPA is finalizing the alternative provision that requires further fuel analysis sampling for Hg every 12 months for certain coal-fired boilers based on their initial compliance demonstration, as described immediately above and in the January 2015 proposal, in place of the February 2013 final rule's provision that eliminated further fuel analysis sampling for Hg for such boilers, as discussed later in this section of the preamble.

Three commenters agreed with the provision that eliminates further fuel sampling for Hg for coal-fired boilers when initial compliance demonstrations based on fuel analysis show that the Hg constituents in their fuel or fuel mixture are equal to or less than half of the Hg emission limit and that requires the owner or operator to continue to comply with all applicable operating limits and monitoring requirements. Two commenters stated that the coal Hg content data in the EPA's Boiler MACT survey database support the provision in that the majority of the data is lower than the Hg emission limit for area source coal-fired boilers. The commenters noted that the provision promotes use of low-mercury coal, one stating that the Hg content in petroleum coke has very little variability and referencing a particular facility where the Hg content is well below the Hg limit. One commenter further stated that the provision eliminates unnecessary reporting without compromising the environmental and health benefits of the Area Source Boilers Rule. Another commenter noted that for units complying with the Hg limit, subsequent fuel analysis would not provide additional useful information, is unnecessary, and the costs are unwarranted.

One commenter supported the alternative provision that would require less frequent (once every 12 months) fuel analysis sampling for Hg when initial compliance demonstrations based on fuel analysis show that the Hg constituents in the fuel or fuel mixture are equal to or less than half of the limit in lieu of totally eliminating further fuel sampling for Hg.

One commenter objected to a provision that eliminates or reduces further fuel sampling for Hg when initial compliance demonstrations based on fuel analysis show that the Hg constituents in the fuel or fuel mixture are equal to or less than half of the limit. The commenter asserted that because the EPA has promulgated MACT standards for coal-fired boilers at area sources, it is arbitrary and unlawful to not require monitoring sufficient to assure compliance with the standards. The commenter further asserted that a single fuel analysis showing Hg content at or below half of the limit does not assure compliance with the standard in perpetuity, particularly in light of the high variability of the Hg content of the fuels burned. The commenter added that sources are allowed to burn highly non-homogenous fuels without changing subcategories, which enables a high degree of variability in emissions, and that many coal-fired boilers co-fire biomass of varying proportions. The commenter included their analysis of EPA fuel analysis data for major and area source boilers that shows that 22.5 percent of sources experienced sufficient variability in the Hg content of their coal to obtain a result in one fuel analysis low enough to exempt them from any future fuel sampling, while another analysis at the same facility exceeds the provision's Hg content limit. The commenter asserted that biomass fuels also have a large range of variability in Hg content.

Based on our review of the public comments and the data available for quantifying variability in coal Hg content, the EPA is finalizing the provision that specifies that further fuel analysis sampling for Hg does not need to be conducted for 12 months if, when demonstrating initial compliance with the Hg emission limit based on fuel analysis, the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit. New or reconstructed boilers that commenced construction or reconstruction on or before publication of this final action and that previously demonstrated that the Hg constituents in their fuel or fuel mixture were equal to or less than half of the Hg emission limit are provided 12 months from publication of this action before they are required to conduct fuel analysis sampling for Hg. The owner or operator is required to continue to comply with all applicable operating limits and monitoring requirements, which include only burning the fuel types and fuel mixtures used to demonstrate compliance and keeping monthly records of fuel use. As specified in 40 CFR 63.11220, a fuel analysis must be conducted before burning a new type of fuel or fuel mixture. Boilers with fuel analysis results that show that Hg constituents in the fuel or fuel mixture are greater than half of the Hg emission limit are required to conduct quarterly sampling.

A review of Hg fuel analysis data for area source coal-fired boilers informed the EPA that Hg content in coal combusted in individual boilers can vary by more than a factor of two. Specifically, of ten coal-fired boilers with multiple fuel analysis samples, four had ratios of maximum to minimum Hg emission rates that were greater than two (*i.e.,* 2.2, 3.0, 5.8, and 11.2). In addition, two of the boilers had fuel samples with Hg content that were less than half of the emission limit but other samples with Hg content that exceeded the emission limit. Based on this information, the EPA does not believe that finalizing a provision that eliminates further fuel analysis sampling for Hg based on a single demonstration is appropriate or environmentally protective for long-term compliance, but has concluded that it is appropriate to provide some compliance flexibility by reducing periodic fuel sampling for boilers combusting coal with low Hg content to every 12 months.

A detailed discussion of our findings is included in the "Response to 2015 Reconsideration Comments for Industrial, Commercial, and Institutional Boilers at Area Sources: National Emission Standards for Hazardous Air Pollutants" located in the docket.

## IV. Technical Corrections and Clarifications

In the January 21, 2015, notice of reconsideration, the EPA also proposed to correct typographical errors and clarify provisions of the final rule that may have been unclear. This section of the preamble summarizes the refinements made to the proposed corrections and clarifications, as well as corrections and clarifications being finalized based on comment.

### *A. Affirmative Defense for Violation of Emission Standards During Malfunction*

The EPA received numerous comments on its proposal to remove from the current rule the affirmative defense to civil penalties for violations caused by malfunctions. Several commenters supported the removal of the affirmative defense for malfunctions. Other commenters opposed the removal of the affirmative defense provision.

First, a commenter (AF&PA) urged the EPA to publish a new or supplemental statement of basis and purpose for the proposed rule that explains (and allows for public comment on) the appropriateness of applying the boiler emission standards to malfunction periods without an affirmative defense provision.

Second, a commenter (AF&PA) argued the affirmative defense was something that the EPA considered necessary when the current standards were promulgated; it was part of the statement of basis and purpose for the standards required to publish under CAA section 307(d)(6)(A).

Third, commenters (CIBO/ACC) argued that the EPA should not remove the affirmative defense until the issue is resolved by the Court. Furthermore commenters (CIBO/ACC and AF&PA) argued the Natural Resources Defense Council (NRDC) Court decision that the EPA cites as the reason for eliminating the affirmative defense provisions does not compel the EPA's action to remove the affirmative defense in this rule.

Fourth, commenters (CIBO/ACC and AF&PA) argued that without affirmative defense or adjusted standards, the final rule provides sources no means of demonstrating compliance during malfunctions.

Fifth, commenters (CIBO/ACC, AF&PA, and Class of '85 Regulatory Response Group) urged the EPA to establish work practice standards that would apply during periods of malfunction instead of the emission rate limits, or a combination of work practices and alternative numerical emission limitations. Commenters noted that the EPA can address malfunctions using the authority Congress gave it in CAA sections 112(h) and 302(k) to substitute a design, equipment, work practice, or operational standard for a numerical emission limitation.

The Court recently vacated an affirmative defense in one of the EPA's CAA section 112(d) regulations. *NRDC* v. *EPA,* No. 10–1371 (D.C. Cir. April 18, 2014) 2014 U.S. App. LEXIS 7281 (vacating affirmative defense provisions in the CAA section 112(d) rule establishing emission standards for Portland cement kilns). The Court found that the EPA lacked authority to establish an affirmative defense for private civil suits and held that under the CAA, the authority to determine civil penalty amounts in such cases lies exclusively with the courts, not the EPA. Specifically, the Court found: "As the language of the statute makes clear, the courts determine, on a case-by-case basis, whether civil penalties are 'appropriate.' " *see* NRDC, 2014 U.S. App. LEXIS 7281 at *21 ("[U]nder this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not EPA."). As a result, the EPA is not including a regulatory affirmative defense provision in the final rule. The EPA notes that removal of the affirmative defense does not in any way alter a source's compliance obligations under the rule, nor does it mean that such a defense is never available.

Second, the EPA notes that the issue of establishing a work practice standard for periods of malfunctions or developing standards consistent with performance of best performing sources under all conditions, including malfunctions, was raised previously; *see* the discussion in the March 21, 2011, preamble to the final rule (76 FR 15560). In the most recent notice of proposed reconsideration (80 FR 2871, January 21, 2015), the EPA proposed to remove the affirmative defense provision, in light of the *NRDC* decision. The EPA did not propose or solicit comment on any revisions to the requirement that emissions standards be met at all times, or on alternative standards during periods of malfunctions. Therefore, the question of whether the EPA can and should establish different standards during malfunction periods, including work practice standards, is outside the scope of this final reconsideration action.

Finally, in the event that a source fails to comply with an applicable CAA section 112(d) standard as a result of a malfunction event, the EPA's (or other delegated or approved authority's) ability to exercise its case-by-case enforcement discretion to determine an appropriate response provides sufficient flexibility in such circumstances as was explained in the preamble to the proposed rule. Further, as the Court recognized, in an EPA (or other delegated or approved authority) or citizen enforcement action, the Court has the discretion to consider any defense raised and determine whether penalties are appropriate. Cf. *NRDC,* 2014 U.S. App. LEXIS 7281 at *24 (arguments that violation were caused by unavoidable technology failure can be made to the courts in future civil cases when the issue arises). The same is true for the presiding officer in EPA administrative enforcement actions. The EPA notes that the Court in *United States Sugar Corp* v. *EPA* (No. 11–1108, D.C. Cir., July 29, 2016) (slip op. at 34–36) rejected challenges to the EPA's approach of applying limits during periods of malfunctions, not establishing a separate work practice, and relying on enforcement discretion in individual cases.

### *B. Definition of Coal*

The last part of the definition of coal published in the March 21, 2011, final rule (76 FR 15554) reads as follows: "Coal derived gases are excluded from this definition [of coal]." In the January 2015 proposal (80 FR 2871), the EPA proposed to modify this definition to read as follows: "Coal derived gases and liquids are excluded from this definition [of coal]." The EPA characterized its proposed change to the definition as one of several "clarifying changes and corrections." This proposed change was based on a question received on whether coal derived liquids were meant to be included in the coal definition.

The EPA received a comment disagreeing with the proposed change to the definition of coal. The commenter (CIBO/ACC) asserted that the revised definition is not logically consistent with the other fuel definitions and irrationally recategorizes specific units as liquid fuel fired where a data analysis would rationally lead them to remaining in the solid fuel category. Specifically, the commenter contended that it is illogical to treat coal derived liquids differently than coal-water mixtures and coal-oil mixtures, both of which are included in the proposed revised definition of "coal." The commenter explained that coal-water mixtures and coal-oil mixtures are both included in the definition and both are utilized as liquid oil or gas replacements fuels, similar to utilization of coal derived liquids.

The EPA also proposed the same modification to the definition of coal included in the Boiler MACT (80 FR 3090, January 21, 2015) and subsequently received several comments disagreeing with the proposed change in that action that we also believe are appropriate to consider in this action. Specifically, one commenter who operates a facility with coal derived liquids contended that the composition and emission profile of coal derived liquids more closely resemble the coal from which they are derived than liquid fuels. The commenter also noted that coal derived liquid fuels are treated as coal/solid fossils in other related rules such as 40 CFR part 60, subpart Db.

Based on these comments, the EPA is not finalizing any changes to the definition of coal. The definition published on March 21, 2011 (76 FR 15554) remains unchanged. As noted by the commenters, treating coal liquids as coal is consistent with the ICI Boiler NSPS (40 CFR part 60, subpart Db), and the EPA agrees with the commenters that coal derived liquids are more similar to coal solid fuels than liquid fuels.

### *C. Other Corrections and Clarifications*

In finalizing the rule, the EPA is addressing several other technical corrections and clarifications in the regulatory language based on public comments that were received in response to the January 2015 proposal and other feedback as a result of implementing the rule. In addition to the changes outlined in Table 1 of the January 21, 2015, proposal (80 FR 2879), the EPA is finalizing several other changes, as outlined in Table 2 as follows:

TABLE 2—SUMMARY OF TECHNICAL CORRECTIONS AND CLARIFICATIONS SINCE JANUARY 2015 PROPOSAL

| Section of subpart JJJJJJ | Description of correction |
|---|---|
| 63.11195(c) | • Revised the paragraph to remove "unless such units do not combust hazardous waste and combust comparable fuels." The comparable fuels exclusion codified in 40 CFR 261.38 was vacated by the Court. |
| 63.11223(c) | • Revised the paragraph to clarify the oxygen level set point for a source not subject to emission limits. The following sentence was added at the end of the paragraph, "If an oxygen trim system is utilized on a unit without emission standards to reduce the tune-up frequency to once every 5 years, set the oxygen level no lower than the oxygen concentration measured during the most recent tune-up." This clarification was made instead of the proposed clarification to 63.11224(a)(7). |
| 63.11225(e) | • Revised the paragraph to include current electronic reporting procedures. |
| 63.11237 | • Revised the definition of "Liquid fuel" to remove the phrase "and comparable fuels as defined under 40 CFR 261.38." The comparable fuels exclusion codified in 40 CFR 261.38 was vacated by the Court.<br>• Revised the definition of "Voluntary consensus standards (VCS)" to correct typographical errors. |

## V. Other Actions We Are Taking

Section 307(d)(7)(B) of the CAA states that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b))."

As to the first procedural criterion for reconsideration, a petitioner must show why the issue could not have been presented during the comment period, either because it was impracticable to raise the issue during that time or because the grounds for the issue arose after the period for public comment (but within 60 days of publication of the final action). The EPA is denying the petition for reconsideration on one issue (*i.e.,* Authority to Require an Energy Assessment) because this criterion has not been met. With respect to that issue, the petition reiterates comments made on the June 4, 2010, proposed rule during the public comment period for that rule. The EPA responded to those comments in the final rule and made appropriate revisions to the proposed rule after consideration of public comments received. It is well established that an agency may refine its proposed approach without providing an additional opportunity for public comment. *See Community Nutrition Institute* v. *Block,* 749 F.2d at 58 and *International Fabricare Institute* v. *EPA,* 972 F.2d 384, 399 (D.C. Cir. 1992) (notice and comment is not intended to result in ''interminable back-and-forth[,]'' nor is agency required to provide additional opportunity to comment on its response to comments) and *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 547 (D.C. Cir. 1983) (''notice requirement should not force an agency endlessly to repropose a rule because of minor changes'').

In the EPA's view, an objection is of central relevance to the outcome of the rule only if it provides substantial support for the argument that the promulgated regulation should be revised. *See Union Oil* v. *EPA,* 821 F.2d 768, 683 (D.C. Cir. 1987) (the Court declined to remand the rule because petitioners failed to show substantial likelihood that the final rule would have been changed based on information in the petition). *See* also the EPA's Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings for Greenhouse Gases under section 202 of the CAA, 75 FR at 49556, 49561 (August 13, 2010). *See* also, 75 FR at 49556, 49560–49563 (August 13, 2010), and 76 FR at 4780, 4786–4788 (January 26, 2011) for additional discussion of the standard for reconsideration under CAA section 307(d)(7)(B).

In this final decision, several changes that are corrections, editorial changes, and minor clarifications have been made. In one instance, one of those changes made a petitioner's issue (*i.e.,* Averaging Period for CO) moot. Therefore, we are denying reconsideration of that issue.

### *A. Request for Reconsideration of the Energy Assessment Requirement*

The petitioner (AF&PA) alleged that a beyond-the-floor requirement of an energy assessment is outside the EPA's authority to set emissions standards under CAA section 112(d)(1) ''for each category or subcategory of major sources and area sources.'' The petition contends that the EPA has defined the source category for these rules to include only specified types of boilers and process heaters and, therefore, those are the only sources for which the EPA may set standards under these rules.

The petitioner also alleged that the energy assessment requirement is not an ''emissions standard'' as that term is defined in the CAA and, therefore, the EPA does not have authority to prescribe such requirements. The petition contends that, furthermore, as a practical matter, even if energy efficiency projects are implemented, there is no guarantee that there will be a corresponding reduction in HAP emissions from affected boilers and process heaters.

While the petition refers to not only boilers, but also ''process heaters,'' the EPA has defined the source category for the Area Source Boilers Rule to include only specified types of boilers and, therefore, those are the only sources for which the EPA has set standards under this rule. The petitioner has not demonstrated that it was impracticable to comment on these issues during the public comment period on the proposed Area Source Boilers Rule. In fact, petitioners provided the same comments during that comment period, and subsequently challenged the EPA's establishment of the energy assessment requirement. The Court in *United States Sugar Corp.* v. *EPA* (No. 11–1108, D.C. Cir., July 29, 2016)(slip op. at 52) rejected challenges to the energy assessment rule both as a beyond the floor MACT standard and as a GACT standard. Therefore, the EPA is denying the petition for reconsideration of this issue.

### *B. Request for Clarification of the Averaging Period for CO*

One petitioner (AF&PA) requested clarification in Table 1 to subpart JJJJJJ of part 63. Specifically, Items 1 and 2 in Table 1 specify that units can comply with the CO limit using a 3-run average or a 10-day rolling average (when using CO CEMS). The Item 6 entry for CO does not include the averaging period text. The petitioner requested that text be added to Table 1, Item 6 that clarifies the averaging period for the CO limit (*i.e.,* ''3-run average or 10-day rolling average'').

Item 6 of Table 1 to subpart JJJJJJ of part 63 has been amended to clarify that either a 3-run average or a 10-day rolling average is an appropriate averaging period for the CO emission limit. The petitioner's comments are, therefore, now moot and we are denying reconsideration on this issue.

## VI. Impacts Associated With This Final Rule

This action finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the February 2013 final Area Source Boilers Rule (78 FR 7488). The EPA is finalizing the definitions of startup and shutdown that were promulgated in the February 2013 final rule along with revisions we proposed to make to those definitions, including an alternate definition of startup, and minor adjustments based on public comments. The revisions to the definitions of startup and shutdown clarify the beginning and end of startup and shutdown periods, but do not change the regulatory requirements that apply during those periods or the boilers that are subject to those requirements. We are retaining the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. The EPA is amending the reconsidered provisions regarding the alternative PM standard for new oil-fired boilers that combust low-sulfur oil, the elimination of further performance testing for PM for certain boilers based on their initial compliance test, and the elimination of further fuel sampling for Hg for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal.

Promulgation of the amendments contained in this action does not change the coverage of the final rule nor does it affect the estimated emission reductions, control costs or the benefits of the rule in substance compared to the March 2011 final rule. The EPA explained in the preamble to the February 2013 final rule that promulgated amendments, including this action's five reconsidered provisions, that those amendments did not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and, in fact, would result in a decrease in burden. We further explained that, as compared to the control costs estimated for the March 2011 final rule, the February 2013 final action would not result in any meaningful change in capital and annual cost. *See* 78 FR 7503. Similarly, although this action amends three of the reconsidered provisions, it does not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and would result in a decrease in that burden. As discussed in detail in sections III.B, D, and E of this preamble, the three amended provisions regard compliance flexibilities provided in the February 2013 final rule that we have now determined need to be adjusted to be more environmentally protective and ensure compliance with the CAA. Thus, when compared to the February 2013 provisions, the amended provisions could result in minimal additional impacts on boilers that choose to comply with the amended provisions. In that they are compliance flexibilities and a facility's ability to use the provisions will be on a site-specific basis, the EPA cannot anticipate who will be in a position to use the provisions. We, however, can generally describe what those potential impacts would be.

As discussed in section III.B of this preamble, the EPA is finalizing an alternative PM standard that specifies that new or reconstructed boilers that combust only ultra-low-sulfur liquid fuel (*i.e.,* a distillate oil that has less than or equal to 15 ppm sulfur) meet GACT for PM in place of the February 2013 final rule's alternative PM standard for new or reconstructed oil-fired boilers that combust low-sulfur oil (*i.e.,* oil that contains no more than 0.50 weight percent sulfur). The provision being finalized that specifies that certain boilers meet GACT for PM and, thus, are not subject to the PM emission limit, potentially applies to the subset of oil-fired boilers that are subject to PM emission limits (*i.e.,* new and reconstructed boilers with heat input capacity of 10 MMBtu/hr or greater), including boilers currently meeting the alternative PM standard for boilers that combust low-sulfur oil. The provision being finalized may result in a minimal increase in burden on that subset of sources, when compared to the February 2013 provision that specified that low-sulfur oil-burning boilers meet GACT for PM and are not subject to the PM emission limit. Boilers currently meeting the alternative PM standard for low-sulfur oil burning boilers are provided 3 years from publication of this action before becoming subject to the PM emission limit, providing them time to decide how to comply (*i.e.,* combust only ultra-low-sulfur liquid fuel or conduct a performance stack test demonstrating compliance with the PM emission limit). A number of such boilers, however, would not experience any increase in burden if they were meeting the February 2013 provision by burning ultra-low-sulfur liquid fuel. Specifically, this would be the situation in states such as New York, Connecticut, and New Jersey, which currently limit the sulfur content in oil used for heating purposes to less than 15 ppm. Oil-fired boilers in Maine, Massachusetts, and Vermont used for heating will become subject to 15 ppm sulfur requirements in 2018, which is within the 3-year compliance period provided to boilers currently meeting the alternative PM standard for low-sulfur oil burning boilers. The burden associated with the provision being finalized is still less than the burden that was imposed by the March 2011 final rule which required all oil-fired boilers subject to a PM emission limit to conduct performance stack testing for PM every 3 years.

As discussed in section III.D of this preamble, the EPA is finalizing a provision that specifies that when demonstrating initial compliance with the PM emission limit, if performance test results show that PM emissions from an affected boiler are equal to or less than half of the applicable PM emission limit, additional PM emissions testing does not need to be conducted for 5 years in place of the February 2013 final rule's provision that eliminated further PM performance testing for such boilers. The provision being finalized that allows certain boilers to conduct PM emissions testing every 5 years potentially applies to the subset of boilers that are subject to PM emission limits (*i.e.,* new and reconstructed boilers with heat input capacity of 10 MMBtu/hr or greater), including boilers that previously demonstrated that their PM emissions were equal to or less than half of the PM emission limit. The provision being finalized will result in a minimal increase in burden on that subset of sources, when compared to the February 2013 provision that eliminated further PM emissions testing for such sources, in that they will be required to conduct a performance stack test for PM every 5 years. The burden associated with the provision being finalized is still less than the burden that was imposed by the March 2011 final rule which required all boilers subject to a PM emission limit to conduct performance stack testing for PM every 3 years.

As discussed in section III.E of this preamble, the EPA is finalizing a provision that specifies that when demonstrating initial compliance with the Hg emission limit based on fuel analysis, if the Hg constituents in the fuel or fuel mixture are measured to be equal to or less than half of the Hg emission limit, additional fuel analysis sampling for Hg would not need to be conducted for 12 months in place of the provision that eliminated further fuel sampling for such boilers. The provision being finalized that allows certain boilers to conduct fuel analysis sampling for Hg every 12 months potentially applies to the subset of boilers that are subject to Hg emission limits (*i.e.,* coal-fired boilers with heat input capacity of 10 MMBtu/hr or greater), including boilers that previously demonstrated that the Hg constituents in their fuel or fuel mixture were equal to or less than half of the Hg emission limit. The provision being finalized will result in a minimal increase in burden on that subset of sources, when compared to the February 2013 provision that eliminated further fuel analysis sampling for Hg for such sources, in that they will be required to conduct fuel analysis sampling for Hg every 12 months. The burden associated with the provision being finalized is still less than the burden that was imposed by the March 2011 final rule which required all boilers that demonstrated compliance with the Hg emission limit based on fuel analysis to conduct fuel analysis sampling for Hg on a monthly basis.

## VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This action which finalizes certain provisions and makes technical and clarifying corrections will result in no significant changes to the information collection requirements of the promulgated rule and will have no increased impact on the information collection estimate of projected cost and hour burden made and approved by OMB. The EPA explained in the preamble to the February 2013 final rule that promulgated amendments, including this action's five reconsidered provisions, that those amendments did not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and, in fact, would result in a decrease in burden. Accordingly, the ICR was not revised as a result of the February 2013 final rule. Similarly, although this action amends three of the reconsidered provisions, it does not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and would result in a decrease in that burden. The three amended provisions regard compliance flexibilities that allow reduced performance stack testing and/or fuel sampling for certain boilers. Therefore, the ICR has not been revised as a result of this action. The OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0668.

### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. The small entities subject to the requirements of this action are owners and operators of coal-, biomass-, and oil-fired boilers located at area sources of HAP emissions. The EPA explained in the preamble to the February 2013 final rule that promulgated amendments to the March 2011 final rule that those amendments were closely related to the final Area Source Boilers Rule, which the EPA signed on February 21, 2011, and that took effect on May 20, 2011. We further explained that the EPA prepared a final regulatory flexibility analysis in connection with the final Area Source Boilers Rule and, therefore, pursuant to section 605(c), the EPA was not required to complete a final regulatory flexibility analysis for the February 2013 final rule. (78 FR 7503–7504, February 1, 2013.) This action finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the February 2013 final Area Source Boilers Rule. Further, as explained in section VI of this preamble, the February 2013 final rule that promulgated amendments, including this action's reconsidered provisions, did not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and, in fact, would result in a decrease in burden. Similarly, although this action amends three of the reconsidered provisions, it does not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and would result in a decrease in that burden.

### *D. Unfunded Mandates Reform Act (UMRA)*

This final action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the February 2013 final Area Source Boilers Rule.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This action finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the February 2013 final Area Source Boilers Rule. Thus, Executive Order 13175 does not apply to this action.

### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

### *H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act (NTTAA)*

This action does not involve any new technical standards from those contained in the March 21, 2011, final rule. Therefore, the EPA did not consider the use of any voluntary consensus standards. *See* 76 FR 15588 for the NTTAA discussion in the March 21, 2011, final rule.

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The environmental justice finding in the February 2013 final Area Source Boilers Rule (78 FR 7504, February 1, 2013) remains relevant in this action which finalizes certain provisions and makes technical and clarifying corrections, but does not promulgate substantive changes to the February 2013 final Area Source Boilers Rule.

### *K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

Dated: August 23, 2016.

**Gina McCarthy,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

### Subpart JJJJJJ—[AMENDED]

■ 2. Section 63.11195 is amended by revising paragraphs (c) and (k) to read as follows:

#### § 63.11195 Are any boilers not subject to this subpart?

* * * * *

(c) A boiler required to have a permit under section 3005 of the Solid Waste Disposal Act or covered by subpart EEE of this part (*e.g.,* hazardous waste boilers).

* * * * *

(k) An electric utility steam generating unit (EGU) as defined in this subpart.

■ 3. Section 63.11210 is amended by:
■ a. Revising paragraphs (b) and (e);
■ b. Redesignating paragraphs (f) through (j) as paragraphs (g) through (k);
■ c. Adding a new paragraph (f); and
■ d. Revising the newly designated paragraphs (j) introductory text, (k) introductory text, and (k)(1) and (2).

The revisions and addition read as follows:

### § 63.11210 What are my initial compliance requirements and by what date must I conduct them?

* * * * *

(b) For existing affected boilers that have applicable emission limits, you must demonstrate initial compliance with the applicable emission limits no later than 180 days after the compliance date that is specified in § 63.11196 and according to the applicable provisions in § 63.7(a)(2), except as provided in paragraph (k) of this section.

* * * * *

(e) For new or reconstructed oil-fired boilers that commenced construction or reconstruction on or before September 14, 2016, that combust only oil that contains no more than 0.50 weight percent sulfur or a mixture of 0.50 weight percent sulfur oil with other fuels not subject to a particulate matter (PM) emission limit under this subpart and that do not use a post-combustion technology (except a wet scrubber) to reduce PM or sulfur dioxide emissions, you are not subject to the PM emission limit in Table 1 of this subpart until September 14, 2019, providing you monitor and record on a monthly basis the type of fuel combusted. If you intend to burn a new type of fuel or fuel mixture that does not meet the requirements of this paragraph, you must conduct a performance test within 60 days of burning the new fuel. On and after September 14, 2019, you are subject to the PM emission limit in Table 1 of this subpart and you must demonstrate compliance with the PM emission limit in Table 1 no later than March 12, 2020.

(f) For new or reconstructed boilers that combust only ultra-low-sulfur liquid fuel as defined in § 63.11237, you are not subject to the PM emission limit in Table 1 of this subpart providing you monitor and record on a monthly basis the type of fuel combusted. If you intend to burn a fuel other than ultra-low-sulfur liquid fuel or gaseous fuels as defined in § 63.11237, you must conduct a performance test within 60 days of burning the new fuel.

* * * * *

(j) For boilers located at existing major sources of HAP that limit their potential to emit (*e.g.,* make a physical change or take a permit limit) such that the existing major source becomes an area source, you must comply with the applicable provisions as specified in paragraphs (j)(1) through (3) of this section.

* * * * *

(k) For existing affected boilers that have not operated on solid fossil fuel, biomass, or liquid fuel between the effective date of the rule and the compliance date that is specified for your source in § 63.11196, you must comply with the applicable provisions as specified in paragraphs (k)(1) through (3) of this section.

(1) You must complete the initial compliance demonstration, if subject to the emission limits in Table 1 to this subpart, as specified in paragraphs (a) and (b) of this section, no later than 180 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel and according to the applicable provisions in § 63.7(a)(2).

(2) You must complete the initial performance tune-up, if subject to the tune-up requirements in § 63.11223, by following the procedures described in § 63.11223(b) no later than 30 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel.

* * * * *

■ 4. Section 63.11214 is amended by revising paragraphs (a) through (c) to read as follows:

### § 63.11214 How do I demonstrate initial compliance with the work practice standard, emission reduction measures, and management practice?

(a) If you own or operate an existing or new coal-fired boiler with a heat input capacity of less than 10 million Btu per hour, you must conduct a performance tune-up according to § 63.11210(c) or (g), as applicable, and § 63.11223(b). If you own or operate an existing coal-fired boiler with a heat input capacity of less than 10 million Btu per hour, you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted an initial tune-up of the boiler.

(b) If you own or operate an existing or new biomass-fired boiler or an existing or new oil-fired boiler, you must conduct a performance tune-up according to § 63.11210(c) or (g), as applicable, and § 63.11223(b). If you own or operate an existing biomass-fired boiler or existing oil-fired boiler, you must submit a signed statement in the Notification of Compliance Status report that indicates that you conducted an initial tune-up of the boiler.

(c) If you own or operate an existing affected boiler with a heat input capacity of 10 million Btu per hour or greater, you must submit a signed certification in the Notification of Compliance Status report that an energy assessment of the boiler and its energy use systems was completed according to Table 2 to this subpart and that the assessment is an accurate depiction of your facility at the time of the assessment or that the maximum number of on-site technical hours specified in the definition of energy assessment applicable to the facility has been expended.

* * * * *

■ 5. Section 63.11220 is revised read as follows:

### § 63.11220 When must I conduct subsequent performance tests or fuel analyses?

(a) If your boiler has a heat input capacity of 10 million Btu per hour or greater, you must conduct all applicable performance (stack) tests according to § 63.11212 on a triennial basis, except as specified in paragraphs (b) through (e) of this section. Triennial performance tests must be completed no more than 37 months after the previous performance test.

(b) For new or reconstructed boilers that commenced construction or reconstruction on or before September 14, 2016, when demonstrating initial compliance with the PM emission limit, if your boiler's performance test results show that your PM emissions are equal to or less than half of the PM emission limit, you do not need to conduct further performance tests for PM until September 14, 2021, but must continue to comply with all applicable operating limits and monitoring requirements and must comply with the provisions as specified in paragraphs (b)(1) through (4) of this section.

(1) A performance test for PM must be conducted by September 14, 2021.

(2) If your performance test results show that your PM emissions are equal to or less than half of the PM emission limit, you may choose to conduct performance tests for PM every fifth year. Each such performance test must be conducted no more than 61 months after the previous performance test.

(3) If you intend to burn a new type of fuel other than ultra-low-sulfur liquid fuel or gaseous fuels as defined in § 63.11237, you must conduct a performance test within 60 days of burning the new fuel type.

(4) If your performance test results show that your PM emissions are greater than half of the PM emission limit, you must conduct subsequent performance tests on a triennial basis as specified in paragraph (a) of this section.

(c) For new or reconstructed boilers that commenced construction or reconstruction after September 14, 2016, when demonstrating initial compliance with the PM emission limit, if your boiler's performance test results show that your PM emissions are equal to or less than half of the PM emission limit, you may choose to conduct performance tests for PM every fifth year, but must continue to comply with all applicable operating limits and monitoring requirements and must comply with the provisions as specified in paragraphs (c)(1) through (3) of this section.

(1) Each such performance test must be conducted no more than 61 months after the previous performance test.

(2) If you intend to burn a new type of fuel other than ultra-low-sulfur liquid fuel or gaseous fuels as defined in § 63.11237, you must conduct a performance test within 60 days of burning the new fuel type.

(3) If your performance test results show that your PM emissions are greater than half of the PM emission limit, you must conduct subsequent performance tests on a triennial basis as specified in paragraph (a) of this section.

(d) If you demonstrate compliance with the mercury emission limit based on fuel analysis, you must conduct a fuel analysis according to § 63.11213 for each type of fuel burned as specified in paragraphs (d)(1) through (3) of this section. If you plan to burn a new type of fuel or fuel mixture, you must conduct a fuel analysis before burning the new type of fuel or mixture in your boiler. You must recalculate the mercury emission rate using Equation 1 of § 63.11211. The recalculated mercury emission rate must be less than the applicable emission limit.

(1) For existing boilers and new or reconstructed boilers that commenced construction or reconstruction on or before September 14, 2016, when demonstrating initial compliance with the mercury emission limit, if the mercury constituents in the fuel or fuel mixture are measured to be equal to or less than half of the mercury emission limit, you do not need to conduct further fuel analysis sampling until September 14, 2017, but must continue to comply with all applicable operating limits and monitoring requirements and must comply with the provisions as specified in paragraphs (d)(1)(i) and (ii) of this section.

(i) Fuel analysis sampling for mercury must be conducted by September 14, 2017.

(ii) If your fuel analysis results show that the mercury constituents in the fuel or fuel mixture are equal to or less than half of the mercury emission limit, you may choose to conduct fuel analysis sampling for mercury every 12 months.

(2) For new or reconstructed boilers that commenced construction or reconstruction after September 14, 2016, when demonstrating initial compliance with the mercury emission limit, if the mercury constituents in the fuel or fuel mixture are measured to be equal to or less than half of the mercury emission limit, you may choose to conduct fuel analysis sampling for mercury every 12 months, but must continue to comply with all applicable operating limits and monitoring requirements.

(3) When demonstrating compliance with the mercury emission limit, if the mercury constituents in the fuel or fuel mixture are greater than half of the mercury emission limit, you must conduct quarterly sampling.

(e) For existing affected boilers that have not operated on solid fossil fuel, biomass, or liquid fuel since the previous compliance demonstration and more than 3 years have passed since the previous compliance demonstration, you must complete your subsequent compliance demonstration no later than 180 days after the re-start of the affected boiler on solid fossil fuel, biomass, or liquid fuel.

■ 6. Section 63.11221 is amended by revising paragraph (c) to read as follows:

### § 63.11221 Is there a minimum amount of monitoring data I must obtain?

* * * * *

(c) You may not use data collected during periods of startup and shutdown, monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or quality control activities in calculations used to report emissions or operating levels. Any such periods must be reported according to the requirements in § 63.11225. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

* * * * *

■ 7. Section 63.11222 is amended by revising paragraph (a)(2) to read as follows:

### § 63.11222 How do I demonstrate continuous compliance with the emission limits?

(a) * * *

(2) If you have an applicable mercury or PM emission limit, you must keep records of the type and amount of all fuels burned in each boiler during the reporting period. If you have an applicable mercury emission limit, you must demonstrate that all fuel types and mixtures of fuels burned would result in lower emissions of mercury than the applicable emission limit (if you demonstrate compliance through fuel analysis), or result in lower fuel input of mercury than the maximum values calculated during the last performance stack test (if you demonstrate compliance through performance stack testing).

* * * * *

■ 8. Section 63.11223 is amended by revising paragraph (c) to read as follows:

### § 63.11223 How do I demonstrate continuous compliance with the work practice and management practice standards?

* * * * *

(c) Boilers with an oxygen trim system that maintains an optimum air-to-fuel ratio that would otherwise be subject to a biennial tune-up must conduct a tune-up of the boiler every 5 years as specified in paragraphs (b)(1) through (7) of this section. Each 5-year tune-up must be conducted no more than 61 months after the previous tune-up. For a new or reconstructed boiler with an oxygen trim system, the first 5-year tune-up must be no later than 61 months after the initial startup. You may delay the burner inspection specified in paragraph (b)(1) of this section and inspection of the system controlling the air-to-fuel ratio specified in paragraph (b)(3) of this section until the next scheduled unit shutdown, but you must inspect each burner and system controlling the air-to-fuel ratio at least once every 72 months. If an oxygen trim system is utilized on a unit without emission standards to reduce the tune-up frequency to once every 5 years, set the oxygen level no lower than the oxygen concentration measured during the most recent tune-up.

* * * * *

■ 9. Section 63.11225 is amended by revising paragraphs (a)(4) introductory text, (b) introductory text, (c)(2)(iv), (e), and (g) introductory text to read as follows:

### § 63.11225 What are my notification, reporting, and recordkeeping requirements?

(a) * * *

(4) You must submit the Notification of Compliance Status no later than 120 days after the applicable compliance date specified in § 63.11196 unless you own or operate a new boiler subject only to a requirement to conduct a biennial or 5-year tune-up or you must conduct a performance stack test. If you own or operate a new boiler subject to a requirement to conduct a tune-up, you are not required to prepare and submit a Notification of Compliance Status for the tune-up. If you must conduct a performance stack test, you must submit the Notification of Compliance Status within 60 days of completing the performance stack test. You must submit the Notification of Compliance

Status in accordance with paragraphs (a)(4)(i) and (vi) of this section. The Notification of Compliance Status must include the information and certification(s) of compliance in paragraphs (a)(4)(i) through (v) of this section, as applicable, and signed by a responsible official.

* * * * *

(b) You must prepare, by March 1 of each year, and submit to the delegated authority upon request, an annual compliance certification report for the previous calendar year containing the information specified in paragraphs (b)(1) through (4) of this section. You must submit the report by March 15 if you had any instance described by paragraph (b)(3) of this section. For boilers that are subject only to the energy assessment requirement and/or a requirement to conduct a biennial or 5-year tune-up according to § 63.11223(a) and not subject to emission limits or operating limits, you may prepare only a biennial or 5-year compliance report as specified in paragraphs (b)(1) and (2) of this section.

* * * * *

(c) * * *

(2) * * *

(iv) For each boiler subject to an emission limit in Table 1 to this subpart, you must keep records of monthly fuel use by each boiler, including the type(s) of fuel and amount(s) used. For each new oil-fired boiler that meets the requirements of § 63.11210(e) or (f), you must keep records, on a monthly basis, of the type of fuel combusted.

* * * * *

(e)(1) Within 60 days after the date of completing each performance test (as defined in § 63.2) required by this subpart, you must submit the results of the performance tests, including any associated fuel analyses, following the procedure specified in either paragraph (e)(1)(i) or (ii) of this section.

(i) For data collected using test methods supported by the EPA's Electronic Reporting Tool (ERT) as listed on the EPA's ERT Web site (*https://www3.epa.gov/ttn/chief/ert/ert_info.html*) at the time of the test, you must submit the results of the performance test to the EPA via the Compliance and Emissions Data Reporting Interface (CEDRI). (CEDRI can be accessed through the EPA's Central Data Exchange (CDX) (*https://cdx.epa.gov/*).) Performance test data must be submitted in a file format generated through the use of the EPA's ERT or an alternate electronic file format consistent with the extensible markup language (XML) schema listed on the EPA's ERT Web site. If you claim that some of the performance test information being submitted is confidential business information (CBI), you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For data collected using test methods that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the test, you must submit the results of the performance test to the Administrator at the appropriate address listed in § 63.13.

(2) Within 60 days after the date of completing each CEMS performance evaluation (as defined in § 63.2), you must submit the results of the performance evaluation following the procedure specified in either paragraph (e)(2)(i) or (ii) of this section.

(i) For performance evaluations of continuous monitoring systems measuring relative accuracy test audit (RATA) pollutants that are supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the EPA via the CEDRI. (CEDRI can be accessed through the EPA's CDX.) Performance evaluation data must be submitted in a file format generated through the use of the EPA's ERT or an alternate file format consistent with the XML schema listed on the EPA's ERT Web site. If you claim that some of the performance evaluation information being submitted is CBI, you must submit a complete file generated through the use of the EPA's ERT or an alternate electronic file consistent with the XML schema listed on the EPA's ERT Web site, including information claimed to be CBI, on a compact disc, flash drive, or other commonly used electronic storage media to the EPA. The electronic storage media must be clearly marked as CBI and mailed to U.S. EPA/OAQPS/CORE CBI Office, Attention: Group Leader, Measurement Policy Group, MD C404–02, 4930 Old Page Rd., Durham, NC 27703. The same ERT or alternate file with the CBI omitted must be submitted to the EPA via the EPA's CDX as described earlier in this paragraph.

(ii) For any performance evaluations of continuous monitoring systems measuring RATA pollutants that are not supported by the EPA's ERT as listed on the EPA's ERT Web site at the time of the evaluation, you must submit the results of the performance evaluation to the Administrator at the appropriate address listed in § 63.13.

* * * * *

(g) If you have switched fuels or made a physical change to the boiler and the fuel switch or change resulted in the applicability of a different subcategory within this subpart, in the boiler becoming subject to this subpart, or in the boiler switching out of this subpart due to a fuel change that results in the boiler meeting the definition of gas-fired boiler, as defined in § 63.11237, or you have taken a permit limit that resulted in you becoming subject to this subpart or no longer being subject to this subpart, you must provide notice of the date upon which you switched fuels, made the physical change, or took a permit limit within 30 days of the change. The notification must identify:

* * * * *

### § 63.11226 [Removed and Reserved]

■ 10. Section 63.11226 is removed and reserved.

■ 11. Section 63.11237 is amended by:

■ a. Removing the definition of "Affirmative defense";

■ b. Adding in alphabetical order a definition for "Annual capacity factor";

■ c. Revising the definition of "Dry scrubber";

■ d. Adding in alphabetical order a definition for "Fossil fuel";

■ e. Revising the definitions of "Gas-fired boiler", "Limited-use boiler", "Liquid fuel", "Load fraction", "Oxygen trim system", "Shutdown", and "Startup";

■ f. Adding in alphabetical order definitions for "Ultra-low-sulfur liquid fuel" and "Useful thermal energy"; and

■ g. Revising the definition of "Voluntary Consensus Standards (VCS)".

The revisions and additions read as follows:

### § 63.11237 What definitions apply to this subpart?

* * * * *

*Annual capacity factor* means the ratio between the actual heat input to a boiler from the fuels burned during a calendar year and the potential heat input to the boiler had it been operated for 8,760 hours during a year at the maximum steady state design heat input capacity.

* * * * *

*Dry scrubber* means an add-on air pollution control system that injects dry alkaline sorbent (dry injection) or sprays an alkaline sorbent (spray dryer) to react with and neutralize acid gas in the exhaust stream forming a dry powder material. Sorbent injection systems used as control devices in fluidized bed boilers are included in this definition. A dry scrubber is a dry control system.

* * * * *

*Fossil fuel* means natural gas, oil, coal, and any form of solid, liquid, or gaseous fuel derived from such material.

* * * * *

*Gas-fired boiler* includes any boiler that burns gaseous fuels not combined with any solid fuels and burns liquid fuel only during periods of gas curtailment, gas supply interruption, startups, or for periodic testing, maintenance, or operator training on liquid fuel. Periodic testing, maintenance, or operator training on liquid fuel shall not exceed a combined total of 48 hours during any calendar year.

* * * * *

*Limited-use boiler* means any boiler that burns any amount of solid or liquid fuels and has a federally enforceable annual capacity factor of no more than 10 percent.

*Liquid fuel* includes, but is not limited to, distillate oil, residual oil, any form of liquid fuel derived from petroleum, used oil meeting the specification in 40 CFR 279.11, liquid biofuels, biodiesel, and vegetable oil.

*Load fraction* means the actual heat input of a boiler divided by heat input during the performance test that established the minimum sorbent injection rate or minimum activated carbon injection rate, expressed as a fraction (*e.g.,* for 50 percent load the load fraction is 0.5). For boilers that co-fire natural gas with a solid or liquid fuel, the load fraction is determined by the actual heat input of the solid or liquid fuel divided by heat input of the solid or liquid fuel fired during the performance test (*e.g.,* if the performance test was conducted at 100 percent solid fuel firing, for 100 percent load firing 50 percent solid fuel and 50 percent natural gas, the load fraction is 0.5).

* * * * *

*Oxygen trim system* means a system of monitors that is used to maintain excess air at the desired level in a combustion device over its operating load range. A typical system consists of a flue gas oxygen and/or carbon monoxide monitor that automatically provides a feedback signal to the combustion air controller or draft controller.

* * * * *

*Shutdown* means the period in which cessation of operation of a boiler is initiated for any purpose. Shutdown begins when the boiler no longer supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, or when no fuel is being fed to the boiler, whichever is earlier. Shutdown ends when the boiler no longer supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, and no fuel is being combusted in the boiler.

* * * * *

*Startup* means:

(1) Either the first-ever firing of fuel in a boiler for the purpose of supplying useful thermal energy (such as steam or hot water) for heating and/or producing electricity, or for any other purpose, or the firing of fuel in a boiler after a shutdown event for any purpose. Startup ends when any of the useful thermal energy (such as steam or hot water) from the boiler is supplied for heating and/or producing electricity, or for any other purpose, or

(2) The period in which operation of a boiler is initiated for any purpose. Startup begins with either the first-ever firing of fuel in a boiler for the purpose of supplying useful thermal energy (such as steam or hot water) for heating, cooling or process purposes or producing electricity, or the firing of fuel in a boiler for any purpose after a shutdown event. Startup ends 4 hours after when the boiler supplies useful thermal energy (such as steam or hot water) for heating, cooling, or process purposes or generates electricity, whichever is earlier.

* * * * *

*Ultra-low-sulfur liquid fuel* means a distillate oil that has less than or equal to 15 parts per million (ppm) sulfur.

*Useful thermal energy* means energy (*i.e.,* steam or hot water) that meets the minimum operating temperature, flow, and/or pressure required by any energy use system that uses energy provided by the affected boiler.

* * * * *

*Voluntary Consensus Standards (VCS)* mean technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. EPA/Office of Air Quality Planning and Standards, by precedent, has only used VCS that are written in English. Examples of VCS bodies are: American Society of Testing and Materials (ASTM, 100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–B2959, (800) 262–1373, *http://www.astm.org*), American Society of Mechanical Engineers (ASME, Three Park Avenue, New York, NY 10016–5990, (800) 843–2763, *http://www.asme.org),* International Standards Organization (ISO 1, ch. de la Voie-Creuse, Case postale 56, CH–1211 Geneva 20, Switzerland, +41 22 749 01 11, *http://www.iso.org/iso/home.htm*), Standards Australia (AS Level 10, The Exchange Centre, 20 Bridge Street, Sydney, GPO Box 476, Sydney NSW 2001, +61 2 9237 6171 *http://www.standards.org.au*), British Standards Institution (BSI, 389 Chiswick High Road, London, W4 4AL, United Kingdom, +44 (0)20 8996 9001, *http://www.bsigroup.com*), Canadian Standards Association (CSA, 5060 Spectrum Way, Suite 100, Mississauga, Ontario L4W 5N6, Canada, 800–463–6727, *http://www.csa.ca*), European Committee for Standardization (CEN CENELEC Management Centre Avenue Marnix 17 B–1000 Brussels, Belgium +32 2 550 08 11, *http://www.cen.eu/cen*), and German Engineering Standards (VDI Guidelines Department, P.O. Box 10 11 39 40002, Duesseldorf, Germany, +49 211 6214–230, *http://www.vdi.eu*). The types of standards that are not considered VCS are standards developed by: the United States, *e.g.,* California Air Resources Board (CARB) and Texas Commission on Environmental Quality (TCEQ); industry groups, such as American Petroleum Institute (API), Gas Processors Association (GPA), and Gas Research Institute (GRI); and other branches of the U.S. Government, *e.g.,* Department of Defense (DOD) and Department of Transportation (DOT). This does not preclude EPA from using standards developed by groups that are not VCS bodies within their rule. When this occurs, EPA has done searches and reviews for VCS equivalent to these non-EPA methods.

* * * * *

■ 12. Table 1 to Subpart JJJJJJ of Part 63 is amended by revising the entry 6 to read as follows:

* * * * *

### TABLE 1 TO SUBPART JJJJJ OF PART 63—EMISSION LIMITS

| If your boiler is in this subcategory . . . | For the following pollutants . . . | You must achieve less than or equal to the following emission limits, except during periods of startup and shutdown . . . |
|---|---|---|
| * * * | * | * * * |
| 6. Existing coal-fired boilers with heat input capacity of 10 MMBtu/hr or greater that do not meet the definition of limited-use boiler. | a. Mercury | 2.2E–05 lb per MMBtu of heat input. |
| | b. CO | 420 ppm by volume on a dry basis corrected to 3 percent oxygen (3-run average or 10-day rolling average). |

■ 13. Table 2 to Subpart JJJJJJ of Part 63 is amended by revising the entry 16 to read as follows:

### TABLE 2 TO SUBPART JJJJJJ OF PART 63—WORK PRACTICE STANDARDS, EMISSION REDUCTION MEASURES, AND MANAGEMENT PRACTICES

| If your boiler is in this subcategory . . . | You must meet the following . . . |
|---|---|
| * | * * * * * * |
| 16. Existing coal-fired, biomass-fired, or oil-fired boilers (units with heat input capacity of 10 MMBtu/hr and greater), not including limited-use boilers. | Must have a one-time energy assessment performed by a qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table satisfies the energy assessment requirement. Energy assessor approval and qualification requirements are waived in instances where past or amended energy assessments are used to meet the energy assessment requirements. A facility that operated under an energy management program developed according to the ENERGY STAR guidelines for energy management or compatible with ISO 50001 for at least 1 year between January 1, 2008, and the compliance date specified in § 63.11196 that includes the affected units also satisfies the energy assessment requirement. The energy assessment must include the following with extent of the evaluation for items (1) to (4) appropriate for the on-site technical hours listed in § 63.11237:<br>(1) A visual inspection of the boiler system,<br>(2) An evaluation of operating characteristics of the affected boiler systems, specifications of energy use systems, operating and maintenance procedures, and unusual operating constraints,<br>(3) An inventory of major energy use systems consuming energy from affected boiler(s) and which are under control of the boiler owner or operator,<br>(4) A review of available architectural and engineering plans, facility operation and maintenance procedures and logs, and fuel usage,<br>(5) A list of major energy conservation measures that are within the facility's control,<br>(6) A list of the energy savings potential of the energy conservation measures identified, and<br>(7) A comprehensive report detailing the ways to improve efficiency, the cost of specific improvements, benefits, and the time frame for recouping those investments. |

■ 14. Table 6 to Subpart JJJJJJ of Part 63 is amended by revising the entry 2 to read as follows:

* * * * *

### TABLE 6 TO SUBPART JJJJJJ OF PART 63—ESTABLISHING OPERATING LIMITS

| If you have an applicable emission limit for . . . | And your operating limits are based on . . . | You must . . . | Using . . . | According to the following requirements |
|---|---|---|---|---|
| * | * | * * | * * | * |
| 2. Mercury | Dry sorbent or activated carbon injection rate operating parameters. | Establish a site-specific minimum sorbent or activated carbon injection rate operating limit according to § 63.11211(b). | Data from the sorbent or activated carbon injection rate monitors and the mercury performance stack tests. | (a) You must collect sorbent or activated carbon injection rate data every 15 minutes during the entire period of the performance stack tests; |

TABLE 6 TO SUBPART JJJJJJ OF PART 63—ESTABLISHING OPERATING LIMITS—Continued

| If you have an applicable emission limit for . . . | And your operating limits are based on . . . | You must . . . | Using . . . | According to the following requirements |
|---|---|---|---|---|
| | | | | (b) Determine the average sorbent or activated carbon injection rate for each individual test run in the three-run performance stack test by computing the average of all the 15-minute readings taken during each test run.<br>(c) When your unit operates at lower loads, multiply your sorbent or activated carbon injection rate by the load fraction, as defined in § 63.11237, to determine the required injection rate. |

* * * * * * *

[FR Doc. 2016–21334 Filed 9–13–16; 8:45 am]
BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

## [EPA–HQ–OPP–2016–0283; FRL–9949–81]

## Acrylic Polymers; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation amends an exemption from the requirement of a tolerance for residues of acrylic polymers when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960 to include the monomers lauryl acrylate and acrylamidopropyl methyl sulfonic acid. OMC Ag Consulting on behalf of Vive Crop Protection Inc submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acrylic polymers on food or feed commodities.

**DATES:** This regulation is effective September 14, 2016. Objections and requests for hearings must be received on or before November 14, 2016, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2016–0283, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

*C. Can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2016–0283 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 14, 2016. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information

(CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2016–0283, by one of the following methods.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Background and Statutory Findings

In the **Federal Register** of July 20, 2016 (81 FR 47151) (FRL–9948–45), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10935) filed by OMC Ag Consulting (828 Tanglewood Lane, East Lansing, MI 48823) on behalf of Vive Crop Protection, Inc. (700 Bay Street, Suite 1100, Toronto, Ontario, Canada M5G–1Z6). The petition requested that the exemption from the requirement of a tolerance for residues of acrylic polymers composed of one or more of the following monomers: Acrylic acid, butyl acrylate, butyl methacrylate, carboxyethyl acrylate, ethyl acrylate, ethyl methacrylate, hydroxybutyl acrylate, hydroxybutyl methacrylate, hydroxyethyl acrylate, hydroxyethyl methacrylate, hydroxypropyl acrylate, hydroxypropyl methacrylate, isobutyl methacrylate, lauryl methacrylate, methacrylic acid, methyl acrylate, methyl methacrylate and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, diethyl maleate, dioctyl maleate, maleic acid, maleic anhydride, monoethyl maleate, monooctyl maleate, N-methyl acrylamide, N,N-dimethyl acrylamide, N-octylacrylamide; and their corresponding ammonium, isopropylamine, monoethanolamine, potassium, sodium triethylamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200 when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.960 be amended to include the monomers lauryl acrylate and acrylamidopropyl methyl sulfonic acid. That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . ." and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Acrylic polymers composed of monomers listed in Unit II conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's minimum number average MW of 1,200 is greater than or equal to 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000.

Thus, acrylic polymers composed of monomers listed in Unit II meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acrylic polymers.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that acrylate polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The minimum number average MW of acrylic polymers is 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acrylic polymers conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity".

EPA has not found acrylic polymers to share a common mechanism of toxicity with any other substances, and acrylic polymers does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acrylic polymers does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acrylic polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of acrylic polymers.

## VIII. Other Considerations

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for acrylic polymers.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of acrylic polymers from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

## XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 16, 2016.

**Michael Goodis,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, the table is amended by revising the following entry to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * * * * | |
| Acrylic polymers composed of one or more of the following monomers: Acrylic acid, butyl acrylate, butyl methacrylate, carboxyethyl acrylate, ethyl acrylate, ethyl methacrylate, hydroxybutyl acrylate, hydroxybutyl methacrylate, hydroxyethyl acrylate, hydroxyethyl methacrylate, hydroxypropyl acrylate, hydroxypropyl methacrylate, isobutyl methacrylate, lauryl methacrylate, methacrylic acid, methyl acrylate, lauryl acrylate, methyl methacrylate and stearyl methacrylate; with none and/or one or more of the following monomers: Acrylamide, diethyl maleate, dioctyl maleate, maleic acid, maleic anhydride, monoethyl maleate, monooctyl maleate, N-methyl acrylamide, N,N-dimethyl acrylamide, N-octylacrylamide, and acrylamidopropyl methyl sulfonic acid; and their corresponding ammonium, isopropylamine, monoethanolamine, potassium, sodium triethylamine, and/or triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu), 1,200. | None. |
| * * * * * * * | |

[FR Doc. 2016–20853 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Part 102–74

**[Notice–MA–2016–05; Docket No. 2016–0002; Sequence 19]**

## Federal Management Regulation; Nondiscrimination Clarification in the Federal Workplace; Correction

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Issuance of bulletin; Correction.

**SUMMARY:** GSA published a document in the **Federal Register** on August 18, 2016 at 81 FR 55148, regarding Nondiscrimination Clarification in the Federal Workplace. GSA is making an editorial change to correct the incorrect CFR part listed in the header.

**DATES:** *Effective:* September 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis Oden, Director, Civil Rights Programs Division (AKB), Office of Civil Rights, 202–417–5711. Please cite Notice–MA–2016–05; Correction.

**SUPPLEMENTARY INFORMATION:**

### Correction

In FR Doc. 2016–19450 published in the **Federal Register** at 81 FR 55148, August 18, 2016, make the following correction:

On page 55148, in the first column, third line of the header, remove "41 CFR part 74" and add "41 CFR part 102–74" in its place.

Dated: September 9, 2016.

**Hada Flowers,**

*Federal Register Liaison, Division Director, Regulatory Secretariat Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy.*

[FR Doc. 2016–22063 Filed 9–13–16; 8:45 am]

**BILLING CODE 6820–14–P**

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 301–11 and 301–70

**[FTR Amendment 2016–02, FTR Case 2015–304; Docket No. 2015–0017, Sequence No. 1]**

**RIN 3090–AJ56**

## Federal Travel Regulation; Clarifying Agency Responsibilities Concerning Reimbursement for Automatic Teller Machine (ATM) Fees and Laundry, Cleaning and Pressing of Clothing Expenses

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is amending the Federal Travel Regulation (FTR) by clarifying the regulations regarding reimbursement for Automatic Teller Machine (ATM) fees and laundry, cleaning, and pressing of clothing expenses.

**DATES:** *Effective:* September 14, 2016.

*Applicability:* Federal agencies have until November 14, 2016 to apply this rule to their internal policies.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Government-wide Policy, at 202–219–2349. For more information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755. Please cite FTR Case 2015–304.

**SUPPLEMENTARY INFORMATION:**

### A. Background

GSA published a proposed rule in the **Federal Register** on January 8, 2016 (81 FR 883). The rule proposed to amend the FTR by expanding the definition of "incidental expenses" (IE) to include ATM fees. Additionally, the rule proposed to amend the FTR by clarifying that agencies have discretion regarding the reimbursement of expenses related to laundry, cleaning, and pressing of clothing for official travel within CONUS that involves four or more consecutive nights of lodging.

The public had 60 calendar days to comment on the proposed rule. GSA received 22 comments from 19 respondents. Two respondents opposed the amendment in general, eleven addressed only the inclusion of ATM fees in the definition of IE, two addressed only the clarification concerning the final approval authority for the reimbursement for laundry, cleaning, and pressing of clothing expenses, three addressed both the proposed IE definition change and the laundry reimbursement clarification (which have been broken out separately below for ease of response), and one was out of scope. Some of these comments resulted in changes to this final rule.

**B. Analysis of Public Comments**

The two comments that opposed the amendment in general are summarized below:

*Comment:* If travel is required to do mission related duties, how can there be a cap on the travel related expenses? The employee should not have to pay out of pocket to do their job.

*Comment:* As a government engineer, I am already paid less than my private industry counterparts and now it appears that I am expected to pay my own travel expenses as well.

*Response:* The final rule changes will have a minimal impact on employee reimbursements for official travel. When necessary to fairly compensate travelers, agencies will retain the discretion to authorize the reimbursement for the cost of ATM fees and/or the cost for laundry, cleaning, and pressing of clothing services while employees are on official travel within CONUS for four or more consecutive nights.

The fourteen comments concerning ATM fees being included in the definition of IE are summarized below:

*Comment:* Proposing to change ATM fees to incidental expenses as part of per diem is patently unfair to Federal employees. You would be forcing employees ordered to travel (many times against the will or convenience of employees) as part of their work duties to subsidize the Federal government's operating costs especially considering the expensive costs of eating at restaurants in many cities.

*Comment:* An employee conducting official business for the government should not be required to use personal funds to augment travel costs. We do not have control over the fees charged by the banks for using their ATMs and we do not have control over fees for "cash advance" charged by the government credit card issuer.

*Comment:* This is not a fair assessment to move the expense of ATM fees under the incidental expense included in the M&IE. It would cause the traveler to come out of pocket for official business.

*Comment:* Moving ATM fees from miscellaneous expenses to incidental expenses means that employees of official travel will have to use per diem funds to pay for ATM fees instead of those available for meals and lodging.

*Comment:* Employees on short trips will receive insufficient incidental expense reimbursement to reimburse the employee for all ATM fees incurred, thereby requiring the employee to pay for the ATM fees out-of-pocket. The proposal also gives agencies the discretion to determine when an employee will be separately reimbursed for ATM fees even though the fees are part of incidental expense allowance. We believe this will result in a disproportionate increase in administrative time required to determine when ATM fees are payable as miscellaneous expenses when compared to any cost savings realized from the proposed regulatory change.

*Comment:* Moving the ATM fee from a miscellaneous expense to an incidental expense puts the burden of government travel onto the traveler which shouldn't be allowed. There are times when an employee might be on travel for a week or more and the ATM fee (with the foreign ATM fee and .025 fee of the total amount) would easily exceed the $5 incidental expense allowance. This goes against the precept that it should not cost the employee to conduct government business (travel).

*Comment:* The $5 limit for incidental expenses will be inadequate to reimburse the actually incurred expenses of employees who use their Citi Travel Cards to obtain cash advances for their TDY. This proposed rule change does not appear to account for these reasonably anticipated costs it will prohibit agencies from reimbursing, to the detriment of employees on TDY.

*Comment:* My agency has put in place restrictions on how much cash we are able to get from ATMs, despite the fact we are advised in many countries to only use cash and not the credit card due to fraud. In all cases we are assessed an ATM fee in the foreign country and again by the travel card. This proposed regulation may mean I end up eating some or all of these costs on my own.

*Comment:* I disagree with including ATM services and fees as part of per diem allowance. Our agency has a large number of traveler's that use the ATM to get advanced funds.

*Comment:* Section 301–12.1 removes ATM fee as a miscellaneous travel expense and does not give agencies discretion to pay ATM fees as a miscellaneous expense. Section 300–70.200(h) implies that an agency or approving official can determine if the ATM fees can be paid as a separate miscellaneous expense, if warranted (*e.g.*, forced gratuity or other incidental expenses, which may exhaust the allowance to cover the cost of ATM fees). Sections 301–12.1 and 300–70.200 are contradictory and need to be revised.

*Comment:* If GSA wishes to embed the ATM fees inside the incidental expenditures part of the traveler reimbursement, then GSA should do a nation-wide survey on incidental expenses. If GSA is unwilling to update the incidental expenses inside CONUS, then the ATM fees should remain a miscellaneous expense reimbursement, fully reimbursable for federal employees.

*Comment:* It is unfair to make them pay these mandated fees which will easily exceed the daily incidental rate. Unlike the USA where taxi, bus, and even the smallest restaurants accept travel cards as payment, many international locations require local cash currency for valid travel related expenses. It is unfair to expect employees to pay for the required currency transaction, exchange rate, ATM surcharges and travel card cash advance fees when this entire system was put in place for government convenience and to reduce government costs by eliminating cashiers necessary to dispense foreign travel currency.

*Comment:* It is not fair that reimbursement for ATM fees for the use of the government card will no longer be a separate miscellaneous item, but will be lumped in with the incidental expenses. The incidental expenses are those that we, as travelers may or may not choose to make. We are required to expend the ATM fees for the use of the government card. This is because we are required by Federal law to use the government travel card (and ONLY the government travel card) when obtaining cash for travel.

*Comment:* The incidental fees for baggage, porters, etc. are discretionary based on the traveler's decision. ATM fees are not discretionary. A traveler is entitled to a cash advance for MI&E expenses which means incurring an ATM fee.

*Response:* Based upon these comments, GSA will neither add ATM fees to the definition for "incidental expenses," nor amend FTR 301–70.200 regarding internal per diem policy, and will continue to list ATM fees as a miscellaneous expense. Agencies will continue to have discretion regarding the reimbursement of ATM fees. In those instances when directly using the Government contractor-issued travel charge card may not be feasible, the amendment to section 301–70.301 mandates agencies to establish policies and procedures governing who will determine if miscellaneous expense reimbursement is appropriate in connection with official travel, to include transaction fees for use of ATMs) when using the Government contractor-issued charge card. If there is a valid reason why the traveler cannot use the Government travel charge for lodging and meals, agencies have the option to fully reimburse travelers for ATM fees. As a result, GSA has updated the language in this final rule based upon these comments.

The five comments that addressed clarification of the policy relating to laundry, cleaning, and pressing of clothing expenses are summarized below:

*Comment:* I have been involved with DoD travel vouchers and claims for over 30 years and recommend not to authorize laundry and dry cleaning as a reimbursable expense. Leave it as an incidental expense.

*Comment:* When TDY for more than a week, laundry usually has to be cleaned. While at the home station, most employees own washers and dryers to do their own laundry. Cleaning laundry while TDY is an added expense that would not otherwise exist and therefore should be covered by miscellaneous expenses and not incidentals.

*Comment:* The change makes the reimbursement for laundry, cleaning and pressing of clothing at the discretion of the agency. This will permit the agency to disallow these expenses entirely.

*Comment:* We recommend that GSA completely eliminate the reimbursement of laundry, dry cleaning, and pressing of clothing, as these expenses are not a direct consequence of traveling. Employees would incur the same expenses for laundry, dry cleaning, and pressing of clothing at their official duty station if they were not in travel status.

*Comment:* 301–11.31 needs to include a minimum number of days or proof of expense must be provided. We have no way of proving if the expense actually occurred, except for dry cleaning. If you make this expense more lenient, we will have traveler's claiming laundry for a single overnight stay.

*Response:* The cost of laundry, cleaning, and pressing of clothing services will continue to be treated as a discretionary, miscellaneous expense. The change in regulatory language is intended to clarify that agencies are responsible for making the final decision with respect to approving this type of expense. Although the FTR stipulates that a TDY trip must be at least four consecutive nights for the traveler to be eligible for reimbursement of laundry and dry cleaning expenses, agencies have the discretion to establish a higher number of minimum nights. Additionally, agencies may choose to deny reimbursement for any laundry, dry cleaning, and clothes pressing expenses. The agency's internal policies should address what the agency will require for the traveler to receive approval for reimbursement for these expenses. This, GSA will not change the language in the amendment based upon these comments.

The following comment was out of scope as it does not pertain to the subject matter of this amendment, and as a result, no change will be made in response:

*Comment:* With everyone having computers, why is there a need for so much travel? Video conferencing costs a fraction of sending ten people to Los Angeles for a convention.

### C. Major Changes in This Final Rule

Based upon the comments received, this final rule does not include ATM fees within the definition of "incidental expenses," but rather leaves reimbursement of these expenses as a miscellaneous expense, and further clarifies that reimbursement for these fees is within the agency's discretion.

### D. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. GSA has determined that this final rule is not a significant regulatory action is not subject to review under section 6(b) of Executive Order 12866. GSA has further determined that this final rule is not a major rule under 5 U.S.C. 804.

### E. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

### F. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

### G. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801. This final rule is not a major rule under 5 U.S.C. 804.

### List of Subjects in 41 CFR Parts 301–11 and 301–70

Government employees, Travel and transportation expenses; Administrative practice and procedures, and Individuals with disabilities.

Dated: August 3, 2016.

**Denise Turner Roth,**

*Administrator of General Services.*

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 5701–5711, GSA amends 41 CFR parts 301–11 and 301–70 as set forth below:

## PART 301–11—PER DIEM EXPENSES

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

**Authority:** 5 U.S.C. 5707.

■ 2. Revise § 301–11.31 to read as follows:

#### § 301–11.31 Are laundry, cleaning and pressing of clothing expenses reimbursable?

Your agency may reimburse the expenses incurred for laundry, cleaning, and pressing of clothing as a miscellaneous travel expense for TDY within CONUS. However, you must incur a minimum of four consecutive nights lodging on official travel to qualify for this reimbursement. Laundry and dry cleaning expenses have not been removed from foreign per diem rates established by the Department of State, or from non-foreign area per diem rates established by the Department of Defense. Separate claims for laundry and dry cleaning expenses incurred in foreign areas and non-foreign areas are not allowed.

## PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 3. The authority citation for 41 CFR part 301–70 continues to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A–126, revised May 22, 1992, and OMB Circular No. A–123, Appendix B, revised January 15, 2009.

■ 4. Amend § 301–70.301 by revising paragraph (c) to read as follows:

**§ 301–70.301 What governing policies must we establish for payment of miscellaneous expenses?**

* * * * *

(c) Who will determine if other miscellaneous expenses are appropriate for reimbursement in connection with official travel, including but not limited to, fees for the use of automated teller machine (ATMs) when using the Government contractor-issued travel charge card and expenses for laundry, cleaning, and pressing of clothing.

[FR Doc. 2016–21993 Filed 9–13–16; 8:45 am]

**BILLING CODE 6820–14–P**

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## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 301–51 and 301–70

**[FTR Amendment 2016–01; FTR Case 2015–303; Docket No. 2016–0005, Sequence No. 1]**

**RIN 3090–AJ68**

## Federal Travel Regulation; Optimal Use of the Government Contractor Issued Travel Charge Card

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Final rule.

**SUMMARY:** GSA is amending the Federal Travel Regulation (FTR) by updating the exemptions from mandatory use of the Government contractor-issued travel charge card to ensure the card is used as often as practicable.

**DATES:**

*Effective:* September 14, 2016.

*Applicability:* Federal agencies have until November 14, 2016 to apply this rule to their internal policies.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Government-wide Policy, at 202–219–2349. For more information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F Street NW., Washington, DC 20405, 202–501–4755. Please cite FTR Case 2015–303.

**SUPPLEMENTARY INFORMATION:**

### A. Background

GSA published a proposed rule in the **Federal Register** on January 29, 2016 (81 FR 5007). That rule proposed amending the FTR to emphasize the need for agencies to maximize Government contractor-issued travel charge card rebates by increasing the use of the card. Additionally, this rule proposed updating the classes of official travel expenses and employees that are exempt from mandatory use of the Government contractor-issued travel charge card, with the goal of increasing the issuance and appropriate use of the cards by employees on official travel.

The public had 60 calendar days to comment on the proposed rule. GSA received six comments. Four comments applied to the proposed rule; however, one did not fall under the purview of this office, and the other was out-of-scope based upon the subject matter of the final rule. As a result of the applicable comments, GSA made changes to the rule, although these changes are not considered to be significant.

### B. Analysis of Public Comments

*Comment:* Proposed paragraph 301–70.700(d) should be revised. It should begin with ''If it is not in the interest of the Government to do so . . .''

*Response:* Upon reflection, GSA determined the proposed amendment to § 301–70.700 to be unnecessary, and therefore, it has been removed.

*Comment:* Federal agencies cannot verify/enforce that their travelers charge all official travel expenses to the Government travel charge card. As a result of this change in practice, verifying the charge card method of payment has become a more labor intensive/expensive process thus nullifying the benefits derived from generating additional travel charge card rebates.

*Response:* The purpose of this amendment is to increase the use of the Government contractor-issued travel charge card by limiting the number of exemptions, as opposed to verifying or enforcing that travelers actually use these cards. Section 301–70.700 already requires that employees, unless exempted, use the Government contractor-issued travel charge card for official travel expenses. Agencies should already have an established verification process in place. Thus, GSA will not change the language in the amendment based upon this comment.

*Comment:* I agree with the changes to § 301–51.2 because it requires more travelers to have and use the Government contractor-issued travel charge card. While §§ 301–70.700, 301–70.701, and 301–70.704 gives the agency a way to exempt employees with poor credit or high delinquency rates.

*Response:* Respondent is in agreement with the final rule. While GSA removed the proposed amendments to §§ 301–70.700 and 301–70.701 as unnecessary, agencies retain the authority to exempt any payment, person, type or class of payments, or type or class of agency personnel if the exemption is determined to be necessary in the interest of the agency.

*Comment:* In the FTR proposal, it is written: If an employee is deemed eligible for a Government contractor-issued travel charge card and is expected to travel, the card must be issued and activated within 60 days of the travel charge card eligibility date, as determined by the agency. The proposal does not state any actions to take if the account is not activated within 60 days. Will GSA be writing something in the FTR that will further clarify what actions should be taken if the cardholder does not activate the account within 60 days?

*Response:* Employees are required to activate the Government contractor-issued travel charge card when received. Agencies should develop internal policy addressing what actions to take if an employee fails to activate the card within 60 days of receipt. GSA has updated sections §§ 301–51.1 and 301–70.708 to address this comment.

*Comment:* Travel cards for official use can be better managed if bills go to a central office for approval and payment. This will also eliminate the massive misuse of the cards. Additionally, it will take the card holder out of the loop for late fees and potential impact on their credit scores.

*Response:* This comment is outside the scope of this rule, and as such, no change will be made to the language of the amendment based upon this comment.

*Comment:* Section 301–12.1 removes ATM fee as a miscellaneous travel expense and does not give agencies discretion to pay ATM fees as a miscellaneous expense. Section 300–70.200(h) implies that an agency or approving official can determine if the ATM fees can be paid as a separate miscellaneous expense, if warranted (*e.g.*, forced gratuity or other incidental expenses, which may exhaust the allowance to cover the cost of ATM fees). Sections 301–12.1 and 300–70.200 are contradictory and need to be revised.

*Response:* This comment is outside the scope of this rule, and as such, no change will be made to the language of the amendment based upon this comment.

### C. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. GSA has determined that this final rule is not a significant regulatory action is not subject to review under section 6(b) of Executive Order 12866. GSA has further determined that this final rule is not a major rule under 5 U.S.C. 804.

### D. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Administrative Procedure Act pursuant to 5 U.S.C. 553(a)(2) because it applies to agency management or personnel.

### E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

### F. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801. This final rule is not a major rule under 5 U.S.C. 804.

### List of Subjects in 41 CFR Parts 301–51 and 301–70

Government employees, Travel and transportation expenses, Paying travel expenses, Internal policy and procedure requirements.

Dated: August 3, 2016.

**Denise Turner Roth,**

*Administrator of General Services.*

For the reasons set forth in the preamble, pursuant to 5 U.S.C. 5701–5711, GSA amends 41 CFR parts 301–51 and 301–70 as set forth below:

## PART 301–51—PAYING TRAVEL EXPENSES

■ 1. The authority citation for 41 CFR part 301–51 continues to read as follows:

**Authority:** 5 U.S.C. 5707. *Subpart A* is issued under the authority of Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note); 40 U.S.C. 121(c).

■ 2. Revise § 301–51.1 to read as follows:

### § 301–51.1 How must I use the Government contractor-issued travel charge card?

You are required to activate the Government contractor-issued travel charge card once you receive it, and then use it as the method of payment for all official travel expenses unless exempted under § 301–51.2.

■ 3. Revise § 301–51.2 to read as follows:

### § 301–51.2 Are there any official travel expenses that are exempt from the mandatory use of the Government contractor-issued travel charge card?

Expenses for which payment through the Government contractor-issued travel charge card is impractical (*e.g.*, vendor does not accept credit cards) or imposes unreasonable burdens or costs (*e.g.*, fees are charged for using the card) are exempt from use of the travel charge card. Your agency may also exempt an official travel expense when it is necessary in the interest of the agency (see § 301–51.4).

### §§ 301–51.3 through 301–51.8 [Redesignated as §§ 301–51.4 through 301–51.9]

■ 4. Redesignate §§ 301–51.3 through 301–51.8 as §§ 301–51.4 through 301–51.9, respectively.

■ 5. Add a new § 301–51.3 to read as follows:

### § 301–51.3 What classes of employees are exempt from mandatory use of the Government contractor-issued travel charge card?

The Administrator of General Services exempts the following classes of employees from mandatory use of the Government contractor-issued travel charge card:

(a) Any employee who has an application pending for the Government contractor-issued travel charge card;

(b) Any employee, when issuance of the Government contractor-issued travel charge card would adversely affect the mission or put the employee at risk; and

(c) Any employee who is not eligible to receive a Government contractor-issued travel charge card.

### § 301–51.6 [Amended]

■ 6. In the newly designated § 301–51.6, after paragraph (c), revise the heading of the note to read "Note to § 301–51.6".

## PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 7. The authority citation for 41 CFR part 301–70 continues to read as follows:

**Authority:** 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec. 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701, note), OMB Circular No. A–126, revised May 22, 1992, and OMB Circular No. A–123, Appendix B, revised January 15, 2009.

### § 301–70.702 [Amended]

■ 8. Amend § 301–70.702 by removing "MTT" and adding "MAE" in its place.

■ 9. Revise § 301–70.704 to read as follows:

### § 301–70.704 What classes of employees are exempt from mandatory use of the Government contractor-issued travel charge card?

The Administrator of General Services exempts the following classes of employees from mandatory use of the Government contractor-issued travel charge card:

(a) Any employee who has an application pending for the Government contractor-issued travel charge card;

(b) Any employee, when issuance of the Government contractor-issued travel charge card would adversely affect the mission or put the employee at risk; and

(c) Any employee who is not eligible to receive a Government contractor-issued travel charge card.

■ 10. Revise § 301–70.708 to read as follows:

### § 301–70.708 What actions may we take if an employee fails to activate the Government contractor-issued travel charge card and/or misuses the travel charge card?

Internal agency policies and procedures should be established defining what are considered to be misuses of the Government contractor-issued travel charge card. Appropriate action may be taken pursuant to those policies if an employee fails to activate the Government contractor-issued travel charge card within 60 days of receipt or misuses the travel charge card.

[FR Doc. 2016–21987 Filed 9–13–16; 8:45 am]

BILLING CODE 6820–14–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 42 CFR Part 73

[CDC Docket No. CDC–2016–0045]

RIN 0920–AA64

## Possession, Use, and Transfer of Select Agents and Toxins—Addition of Bacillus Cereus Biovar Anthracis to the HHS List of Select Agents and Toxins

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Interim final rule and request for comments.

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**SUMMARY:** The Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) is adding *Bacillus cereus* Biovar *anthracis* to the list of HHS select agents and toxins as a Tier 1 select agent. We are taking this action to regulate this agent that is similar to *B. anthracis* to prevent its misuse, which could cause a biological threat to public health and/or national security.

**DATES:**

*Effective date:* The interim final rule is effective on October 14, 2016.

*Public comment period:* Written or electronic comments must be submitted by November 14, 2016.

*Applicability dates:* By October 14, 2016, any individual or entity that possesses *B. cereus* Biovar *anthracis* must provide notice to the CDC's DSAT regarding their possession of this agent and must secure the agent against theft, loss, release, or unauthorized access; and by March 13, 2017, an individual or entity that intends to continue to possess, use, or transfer this agent will be required to either register in accordance with 42 CFR part 73 or amend their current registration in accordance with 42 CFR 73.7(h) and meet all of the requirements of select agent regulations (42 CFR part 73).

**ADDRESSES:** You may submit comments, identified by Docket No. CDC–2016–0045 or RIN 0920–AA64 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Dr. Samuel Edwin, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–A46, Atlanta, Georgia 30329, Attn: Docket CDC–2016–0045

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All relevant comments received will be posted without change to *http://regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

Comments will also be available for public inspection from Monday through Friday, except for legal holidays, from 9 a.m. to 5 p.m., Eastern Time, at 1600 Clifton Road NE., Atlanta, Georgia 30329. Please call ahead to (404) 718–2000 and ask for a representative from the Division of Select Agents and Toxins to schedule your visit.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel Edwin, Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–A46, Atlanta, Georgia 30329. Telephone: (404) 718–2000.

**SUPPLEMENTARY INFORMATION:** The interim final rule is organized as follows:

I. Public Participation
II. Background
  A. Legal Authority
  B. Historical Background to This Rulemaking
III. Rationale for Issuance of an Interim Final Rule
IV. Alternatives Considered
V. Required Regulatory Analyses
  A. Executive Orders 12866 and 13563
  B. The Regulatory Flexibility Act
  C. Paperwork Reduction Act of 1995
  D. EO 12988: Civil Justice Reform
  E. EO 13132: Federalism
  F. Plain Language Act of 2010
VI. References

## I. Public Participation

Interested persons or organizations are invited to participate in this rulemaking by submitting written views, recommendations, and data. HHS/CDC invites comments on the following questions:

(1) Are there other virulent (pBCXO1+ and pBCXO2+) strains of *Bacillus* species that should also be regulated?

(2) What is the impact of designating *B. cereus* Biovar *anthracis* as a Tier 1 select agent?

Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. HHS/CDC will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments that will be made to the rule as a result of the comments.

## II. Background

### A. Legal Authority

HHS/CDC is promulgating this rule under the authority of sections 201–204 and 221 of Title II of Public Law 107–188, 116 Stat 637 (42 U.S.C. 262a).

Subtitle A of Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, (42 U.S.C. 262a), requires HHS to regulate the possession, use, and transfer of biological agents or toxins that the HHS Secretary determines have the potential to pose a severe threat to public health and safety (select agents and toxins). Subtitle B of Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (which may be cited as the Agricultural Bioterrorism Protection Act of 2002), (7 U.S.C. 8401), requires the United States Department of Agriculture (USDA) to regulate the possession, use, and transfer of biological agents or toxins that the USDA Secretary determines have the potential to pose a severe threat to animal or plant health, or animal or plant products (select agents and toxins). Accordingly, HHS and USDA have promulgated regulations requiring individuals or entities that possess, use, or transfer select agents and toxins to register with HHS/CDC or USDA/Animal and Plant Health Inspection Service (APHIS). See 42 CFR part 73, 7 CFR part 331, and 9 CFR part 121 (the select agent regulations). The Federal Select Agent Program, a collaboration of HHS/CDC/Division of Select Agents and Toxins and USDA/APHIS/Agriculture Select Agent Services, administers the select agent regulations in a manner that minimizes the administrative burden on persons subject to the select agent regulations. USDA/APHIS is currently considering whether *B. cereus* Biovar *anthracis* should also be listed as a USDA select agent.

### B. Historical Background to This Rulemaking

Emerging *B. cereus* strains that cause anthrax-like disease have been isolated in Cameroon (CA strain) and Côte d'Ivoire (CI strain). We are currently aware that geographic distribution of *B. cereus* Biovar *anthracis* is limited to some African countries, one registered entity in the United States, and one facility in Germany. The *B. cereus* strain being added to the HHS list of select agents is identified as *B. cereus* Biovar *anthracis* and described in the publication "Characterization of Bacillus anthracis-like bacteria isolated from wild great apes from Cote d'Ivoire and Cameroon" (Ref. 3, see table below). Recent research demonstrates that *B. cereus* Biovar *anthracis* has all of the virulence determinants and threat potential of *Bacillus anthracis,* a Tier 1 select agent (Ref. 1). A biovar is a group of microorganisms that are genetically similar but differ from other members of the species by biochemical or genetic characteristics. *B. cereus* Biovar *anthracis* was originally isolated about a decade ago from gorillas and chimpanzees exhibiting anthrax-like disease in Cameroon and Cote d'Ivoire (Ref. 3–6). Genomic characterization showed that these organisms belong to the *B. cereus* species and harbor two plasmids that are referred to as pBCXO1 and pBCXO2. The plasmid (pBCXO1) is very similar to pXO1, which is found in *B. anthracis,* and encodes active edema and lethal toxins. The plasmid (pBCXO2) is very similar to pXO2, which is found in *B. anthracis,* and encodes the enzymes that synthesize the poly-D-glutamic acid capsule. Thus, these organisms are genetically similar and produce all of the primary virulence factors (toxins and capsule) of *B. anthracis.* In addition, pBCXO2 has a functional *has*ACB operon that encodes a second capsule composed of hyaluronic acid (HA), which enhances the neuro-invasiveness of these organisms in laboratory models of infection (Ref. 1). Accordingly, because we believe that *B. cereus* Biovar *anthracis* has the same potential to pose a severe threat to public health as does Bacillus anthracis, currently regulated as a Tier 1 pathogen, we are adding Bacillus cereus Biovar anthracis to HHS select agent list by an interim final rule because we believe that any delay in bringing the possession, use, or transfer into the United States of this pathogen is contrary to the public interest. A biological agent is designated as Tier 1 when it is determined that it presents the greatest risk of deliberate misuse with significant potential for mass casualties or devastating effect to the economy, critical infrastructure, or public confidence, and poses a severe threat to public health and safety. We believe that Bacillus cereus Biovar anthracis presents the same threat to public health and national security as does Bacillus anthracis.

In December 2015, the question of whether *B. cereus* Biovar *anthracis* should be regulated as a select agent was considered by HHS/CDC's Intragovernmental Select Agents and Toxins Technical Advisory Committee (ISATTAC). The ISATTAC is comprised of Federal government employees from CDC, the Biomedical Advanced Research and Development Authority (BARDA) within the Office of the Assistant Secretary for Preparedness and Response (ASPR), the National Institutes of Health (NIH), the Food and Drug Administration (FDA), the Department of Homeland Security (DHS), the Department of Defense (DOD), the USDA/Animal and Plant Health Inspection Service (APHIS), USDA/Agricultural Research Service (ARS), and USDA Center for Veterinary Biologics (CVB). Based on the criteria outlined in the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 262a), the ISATTAC considered the following in their review: The degree of pathogenicity (ability of an organism to cause disease), communicability (ability to spread from infected to susceptible hosts), ease of dissemination, route of exposure, environmental stability, ease of production in the laboratory, ability to genetically manipulate or alter, long-term health effects, untreated acute mortality, available therapeutics and vaccines, status of immunity, vulnerability of special populations, and the burden or impact on the health care system. The ISATTAC also considered whether *B. cereus* Biovar *anthracis* should be designated as a Tier 1 select agent. Executive Order 13546, "Optimizing the Security of Biological Select Agents and Toxins in the United States," defines as "Tier 1" those select agents and toxins that present the greatest risk of deliberate misuse with the most significant potential for mass casualties or devastating effects to the economy, critical infrastructure; or public confidence (Ref. 7). At this time, HHS/CDC is not proposing to regulate other strains of *B. cereus* that have *B. anthracis* toxin genes as the data available do not suggest those strains pose a severe threat to public health (Ref. 1 and Ref. 8).

The table below comes from "Bacteriological discrimination characteristics of atypical *B. anthracis* strains isolated from great apes, classic *B. anthracis* strains, and other strains of the *B. cereus* group" (Ref. 3).

| Microbiological characteristic | Result[a] | | | | | |
|---|---|---|---|---|---|---|
| | *B. anthracis* CI | | *B. anthracis* CA | | *B. anthracis* | *B. cereus* |
| | Primary culture | Sub culture | Primary culture | Sub culture | | |
| Hemolysis | − | +/− | − | +/− | − | + |
| Motility | + | + | + | + | − | + |
| Susceptibility to gamma phage | − | +/− | − | +/− | + | − |
| Penicillin G | S | S/R | R | R | S | R |
| Capsule | +[b] | +/− | + | +/− | + | Absent in vitro.[c] |

[a] S, sensitive; R, resistant; −, negative; +, positive; +/−, some subclones positive, others negative.

[b] Capsule production on bicarbonate agar under a $CO_2$ atmosphere and on blood agar under an ambient atmosphere.

[c] Certain other *Bacillus* spp. can produce a polypeptide capsule but not under normal culture conditions.

After reviewing scientific publications and consulting with subject matter experts, ISATTAC recommended that *B. cereus* Biovar *anthracis* should be listed as a HHS select agent and regulated as Tier 1 agent because:

- Genomic characterization showed that *B. cereus* Biovar *anthracis* belongs to the *B. cereus* species, but it harbors virulence-associated plasmids that are similar to *B. anthracis,* a Tier 1 select agent (Ref. 1–2).
- Fully virulent (pXO1+ pXO2+) strains of *B. anthracis* are currently regulated as Tier 1 select agent.
- To date, there have been no reports of this biovar having been isolated from humans. However, *B. cereus* Biovar *anthracis* exhibited virulence, comparable to *B. anthracis* in animal models of subcutaneous and intranasal/inhalational anthrax (Ref. 3). Thus, it is reasonable to assume that *B. cereus* Biovar *anthracis* can infect humans by the same routes as *B. anthracis.* In areas (Cameroon and Cote d'Ivoire) where *B. cereus* Biovar *anthracis* has been isolated from gorillas and chimpanzees (Ref. 4–6), it is possible that isolates from human cases could be missed due to the lack of laboratory capacity and to the thorough characterization needed to differentiate *B. anthracis* from *B. cereus* Biovar *anthracis.*
- As with *B. anthracis,* the virulence of this strain as a spore-forming

bacterium may make it attractive to those that wish to circumvent the select agent regulations for nefarious purposes.

- PBCXO2—strains of *B. cereus* Biovar *anthracis* (analogous to *B. anthracis* veterinary vaccine Sterne strain) produce a HA capsule from genes present on pBCXO1. Studies have shown such variants (pBCXO2 − ) are still as virulent as *B. anthracis* in animal models (Ref. 1).
- There is no apparent difference between this organism and *B. anthracis* with respect to the criteria used to designate *B. anthracis* as a Tier 1 agent.

In addition, the Federal Experts Security Advisory Panel (FESAP) provided policy and technical input for the recommendation to list *B. cereus* Biovar *anthracis* as an HHS select agent and regulated as Tier 1 agent. The mission of the FESAP is to make technical and substantive recommendations concerning the appropriate safeguards and security standards for persons possessing, using, or transferring BSAT. The goal of the FESAP is that their recommendations be commensurate with the risk that such agents or toxins pose to public health and safety, including the risk of their use in domestic or international terrorism. The FESAP drew from the expertise of its membership, information from presentations by several federal department and agency subject matter experts, and technical input from the Directors of the Federal Select Agent Program (FSAP) to develop its recommendation. The FESAP has issued a draft report that recommended listing *B. cereus* biovar *anthracis* as a select agent (not Tier 1).

After consideration of all of the above, HHS/CDC has determined that *B. cereus* Biovar *anthracis* should be listed as a Tier 1 HHS select agent given its similarities to *B. anthracis,* which is consistent with current regulatory requirements for *B. anthracis.*

## III. Rationale for Issuance of an Interim Final Rule

Agency rulemaking is governed by section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) which, unless the rule falls within one of the exemptions, requires that HHS/CDC publish a notice of proposed rulemaking in the **Federal Register** that provides interested persons an opportunity to submit written data, views, or arguments. Section 553(b)(B) of the APA authorizes a department or agency to dispense with the prior notice and opportunity for public comment requirement for "good cause" if the department or agency finds that it is contrary to the public interest.

*B. cereus* Biovar *anthracis* has all of the virulence characteristics and threat potential of *Bacillus anthracis,* which is already regulated as a Tier 1 select agent. Accordingly, for the reasons stated above, we have determined that *B. cereus* Biovar *anthracis* not only also has the potential to pose a severe threat to public health and safety; but that it may present a great risk for deliberate misuse with a significant potential for mass casualties or devastating effects to the economy, critical infrastructure; or public confidence. We are taking this action to place this agent under the biosafety and security requirements of the select agent regulations; and to regulate its possession and transfer to prevent an accidental release or its misuse. We believe this interim final rule is in the best interest of public health and national security.

Pursuant to 5 U.S.C. 553(b)(3)(B), and for the reasons stated above, we therefore find that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before it becomes effective because any delay in promulgating the rule would be contrary to the public interest.

## IV. Alternatives Considered

In researching this addition to the HHS select agents and toxins list, we also considered whether *B. cereus* Biovar *anthracis* should be designated as a non-Tier 1 agent. We concluded that *B. cereus* Biovar *anthracis* should be regulated as a Tier 1 select agent for the same reason that we currently regulation *B. anthracis* as a Tier 1 select agent.

## V. Required Regulatory Analyses

### *A. Executive Orders 12866 and 13563*

HHS/CDC has examined the impacts of this interim final rule (IFR) under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993) and Executive Order 13563, Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011). Both Executive Orders direct agencies to evaluate any rule prior to promulgation to determine the regulatory impact in terms of costs and benefits to United States populations and businesses. Further, together, the two Executive Orders set the following requirements: Quantify costs and benefits where the new regulation creates a change in current practice; define qualitative costs and benefits; choose approaches that maximize benefits; support regulations that protect public health and safety; and minimize the impact of regulation. HHS/CDC has analyzed this IFR as required by these Executive Orders and has determined that it is consistent with the principles set forth in the Executive Orders and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). We anticipate that the rule will create minimal impact.

This regulatory impact section presents the anticipated costs and benefits that are quantified where possible. Where quantification is not possible, a qualitative discussion is provided of the costs and/or benefits that HHS/CDC anticipates from issuing this regulation.

### Need for the Regulation

*Bacillus cereus* Biovar *anthracis* is a recently recognized, emerging pathogens that has all the virulence characteristics and threat potential of *Bacillus anthracis,* a Tier 1 select agent. This organism is not currently on the HHS List of Select Agents and Toxins; we are proposing regulating this organism as a Tier 1 select agent because of its potential for misuse and its threat to public health and safety.

### Regulatory Impact Analysis

### Costs

Currently, the only entity in possession of this agent is already registered to possess Tier 1 select agents. As a result, the burden associated with this entity is minimal. However, this rule will also affect entities which plan to possess the agent in the future. We believe that these entities fall into three categories: Entities not currently registered for a select agent or toxin, and entities already registered with the Federal Select Agent Program (FSAP) but not for a Tier 1 agent or toxin, and entities already registered to possess a Tier 1 agent, such as the one already in possession of the agent. Based on the 2012 Select Agent Final Rule, entities already registered with the FSAP but not for a Tier 1 agent or toxin will incur costs of approximately $10,000–$15,000 in order to possess the agent, and median annualized costs to entities not currently registered to possess select agent or toxin are estimated to be approximately $37,000 in order to possess the agent. As noted, for entities already registered to possess a Tier 1 agent, costs are estimated to be minimal. However, we lack data to forecast the number of entities beyond the one entity we are currently aware of that will possess this agent in the future, and as a result we do not estimate the total associated costs.

*Benefits:* The agents and toxins placed on the HHS selects and toxins list have the potential to pose severe threats to public health and safety. The benefits of the HHS/CDC interim final rule derive from the strengthened prevention against the accidental or intentional release of *B. cereus* Biovar *anthracis.* We based the following assumption on the release of *B. anthracis* that occurred in 2001. The cost of such an event in human life could be high. An outbreak of B. *cereus* Biovar *anthracis* also would require a complex and expensive emergency response effort. This effort would include extensive public health measures, such as quarantine, isolation, preventive treatment and health testing for large numbers of potentially exposed persons, and extensive decontamination. Substantial costs would likely be incurred by hospitals and other medical facilities and institutions of government at all levels.

An outbreak of *B. cereus* Biovar *anthracis,* or widespread fear of one, also would likely create significant secondary effects to society including a potentially rapid increase in health anxiety among healthy individuals. This may result in overcrowded healthcare facilities and emergency rooms, and the disruption of everyday business operations, transportation, and other normal behavior.

Impacts from the October 2001 anthrax attacks exemplify the costs that the regulatory revisions will help to prevent. The anthrax attacks caused five fatalities and seventeen illnesses, disrupted business and government activities, closed substantial parts of the U.S. Postal Service, and caused widespread apprehension and changes in behavior. Costs included more than $23 million to decontaminate one Senate office building, approximately $2 billion in revenues lost to the postal service, and as much as $3 billion in additional costs to the U.S. Postal Service for cleanup of contamination and procurement of mail-sanitizing equipment (referenced from the Regulatory Impact Analysis from the 2012 Select Agent Regulations Final Rule). There were substantial costs due to lost productivity throughout the economy and investigations into the incident (referenced from the Regulatory Impact Analysis from the 2012 Select Agent Regulations Final Rule).

A deliberate release of *B. cereus* Biovar *anthracis* may cause wide-ranging impacts to the economy, potential loss of market access for consumer goods and services, other disruptions to society, and diminished confidence in public and private institutions.

*Comparison of Costs and Benefits:* In our analysis, we determined that only one entity that already possesses Tier 1 select agents in the United States is in possession of *B. cereus* Biovar *anthracis.* As noted above, the cost to the entity would be minimal. Also noted above, this rule will affect entities that plan to possess the agent in the future. Based on the 2012 Select Agent Final Rule, entities already registered with the FSAP but not for a Tier 1 agent or toxin will incur costs of approximately $10,000–$15,000 in order to possess the agent, and median annualized costs to entities not currently registered to possess select agent or toxin are estimated to be approximately $37,000 in order to possess the agent. For entities already registered to possess a Tier 1 agent, costs are estimated to be minimal.

The benefit of regulating this organism is the prevention of an outbreak of disease due to this organism. An analysis of the 2001 anthrax incident shows the impact of the outbreak in terms of loss of life, illness, decontamination costs, and loss of productivity.

Based on this analysis, we believe the benefit of this rulemaking outweighs the costs.

### *B. The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)*

We have examined the impacts of the interim final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). Unless we certify that the interim final rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Based on our current knowledge of who possesses *B. cereus* Biovar *anthracis,* we certify that this interim final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This regulatory action is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This interim final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### *C. Paperwork Reduction Act of 1995*

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rulemaking are currently approved by the Office of Management and Budget (OMB) under OMB control number 0920–0576, expiration date 12/31/2018. This includes the burden on entities to submitted amendments to their registrations.

We expect that the entities who will register for possession, use, or transfer of *B. cereus* Biovar *anthracis* will already be registered with the Federal Select Agent Program. This rulemaking will require such an entity to amend its registration with the Federal Select Agent Program using relevant portions of APHIS/CDC Form 1 (Application for Registration for Possessing, Use, and Transfer of Select Agents and Toxins). Estimated time to amend this form is one hour for one select agent. Additionally, any registered entity that wishes to transfer *B. cereus* Biovar *anthracis* will be required to submit information using APHIS/CDC Form 2 (Request to Transfer of Select Agent and Toxins). Estimated average time to complete this form is one hour. Based upon the limited publications on this agent at this time, we estimate that only one registered entity may add *B. cereus* Biovar *anthracis* to their registration or transfer *B. cereus* Biovar *anthracis* to another registered entity. Therefore, we calculate that there is no increase in the number of respondents that need to submit an application for registration, we estimate the total number of responses for entities to submit an amendment to their registration may increase by one, and the total burden hours may increase to one hour.

### *D. E.O. 12988: Civil Justice Reform*

This rule has been reviewed under E.O. 12988, Civil Justice Reform. Once the interim final rule is in effect, HHS/CDC notes that: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

### *E. E.O. 13132: Federalism*

HHS/CDC has reviewed this interim final rule in accordance with Executive Order 13132 regarding Federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

In accordance with section 361(e) of the PHSA [42 U.S.C. 264(e)], nothing in this rule would supersede any provisions of State or local law except to the extent that such a provision conflicts with this rule.

### *F. Plain Language Act of 2010*

Under the Plain Language Act of 2010 (Pub. L. 111–274, October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

## VI. References

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2. Helgason E, Tourasse NJ, Meisal R, Caugant DA, Kolstø AB (2004) Multilocus sequence typing scheme for bacteria of the *Bacillus cereus* group. Appl Environ Microbiol 70: 191–201.
3. Klee SR, Ozel M, Appel B, Boesch C, Ellerbrok H, et al. (2006) Characterization of *Bacillus anthracis*-like bacteria isolated from wild great apes from Cote d'Ivoire and Cameroon. J Bacteriol 188: 5333–5344.
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6. Leendertz FH, Lankester F, Guislain P, Néel C, Drori O, et al. (2006) Anthrax in Western and Central African great apes. Am J Primatol 68: 928–933.
7. Report of the Working Group on Strengthening the Biosecurity of the United States, Executive Order 13486 Working Group (*http://edocket.access.gpo.gov/2009/pdf/E9-818.pdf*).
8. Avashia SB, et al. (2007) Fatal pneumonia among metalworkers due to inhalation exposure to *Bacillus cereus* containing *Bacillus anthracis* toxin genes. Clin. Infect. Dis. 44:414–416.

### List of Subjects in 42 CFR Part 73

Biologics, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Transportation.

For the reasons stated in the preamble, we are amending 42 CFR part 73 as follows:

## PART 73—SELECT AGENTS AND TOXINS

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 42 U.S.C. 262a; sections 201–204, 221 and 231 of Title II of Public Law 107–188, 116 Stat. 637 (42 U.S.C. 262a).

### § 73.3 [Amended]

■ 2. Amend § 73.3(b) by adding the term "*Bacillus cereus* Biovar *anthracis**" in alphabetical order.

Dated: September 8, 2016.

**Sylvia M. Burwell,**

*Secretary.*

[FR Doc. 2016–22049 Filed 9–13–16; 8:45 am]

**BILLING CODE 4163–18–P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1816, 1832, 1842, and 1852

**RIN 2700–AE34**

## NASA Federal Acquisition Regulation Supplement: Revised Voucher Submission & Payment Process (NFS Case 2016–N025)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Interim rule.

**SUMMARY:** NASA is issuing an interim rule amending the NASA Federal Acquisition Regulation Supplement (NFS) to implement revisions to the voucher submittal and payment process. These revisions are necessary due to section 893 of the National Defense Authorization Act for Fiscal Year 2016 prohibiting the Defense Contract Audit Agency (DCAA) from performing audit work for non-Defense Agencies. NASA had delegated to DCAA the task of reviewing contractor requests for payment under NASA cost-type contracts.

**DATES:**

*Effective:* September 14, 2016.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before November 14, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by NFS Case 2016–N025, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering "NFS Case 2016–N025" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "NFS Case 2016–N025." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "NFS Case 2016–N025" on your attached document.

○ *Email: John.J.Lopez@nasa.gov.* Include NFS Case 2016–N025 in the subject line of the message.

○ *Fax:* (202) 358–3082.

○ *Mail:* National Aeronautics and Space Administration, Headquarters, Office of Procurement, Contract and Grant Policy Division, Attn: John J. Lopez, LP–011, 300 E Street SW., Washington, DC 20546–0001.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Lopez, NASA HQ, Office of Procurement, Contract and Grant Policy Division, LP–011, 300 E Street SW., Washington, DC 20456–0001. Telephone 202–358–3740; facsimile 202–358–3082.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This interim rule revises the NFS to implement revisions to the voucher submittal and payment process. These revisions are necessary due to section 893 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) prohibiting DCAA from performing audit work for non-Defense Agencies. Section 893 prohibits DCAA from performing audit work for non-Defense Agencies until DCAA's backlog of incurred cost audits is below 18 months. DCAA's current backlog of cost audits is greater than 18 months. NASA had delegated to DCAA the task of reviewing contractor requests for payment under its cost-type contracts. As a result of section 893, DCAA has ceased cost voucher audit support to NASA, in turn, jeopardizing timely payment to contractors for work performed. NASA has revised its cost voucher submission and payment process to ensure the continued prompt payment to its suppliers. Accordingly, the NFS needs to be immediately revised to implement procedural changes to minimize cost voucher submission and payment delays to NASA suppliers as well the potential accrual of Government interest payments to contractors.

## II. Discussion

Sections of the NFS are being revised to implement changes to NASA's voucher submission and payment process. Specifically, NASA is—

- Deleting the outdated clause prescription at NFS 1816.307–70(e) and associated clause at NFS 1852.216–87 relating to the submission of vouchers for payment;
- Establishing a new clause prescription at NFS 1832.908–70 and associated clause at 1852.232–80 relative to the submission of vouchers for payment that reflects electronic submittal of vouchers and NASA resources processing these payment requests versus DCAA;
- Deleting NFS section 1842.7101(a) and (b) because DCAA is no longer processing vouchers for NASA; thus this guidance is no longer needed; and
- Deleting NFS section 1842.7101(c) because the requirement of submitting additional hard copies of Standard Form 1034 and Standard Form 1035A to the General Services Administration (GSA) is no longer required. This outdated process is being replaced by electronic submissions.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

NASA does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the guidance will not create additional burden to the contractor but rather the rule is intended to update the current voucher submission process at NASA, which will result in fewer voucher rejections, rework, and payment delays. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

NASA is revising the NFS to implement revisions to the voucher submittal and payment process. These revisions are necessary due to section 893 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92) prohibiting DCAA from performing audit work for non-Defense Agencies.

The objective of this rule is to remove the outdated NFS payment clause and associated prescription relative to the NASA voucher submittal and payment process and replace with a new clause that will revamp NASA's cost voucher submission and payment process to ensure the continued prompt payment to its suppliers. The revision will also minimize cost voucher submission and payment delays to NASA suppliers as well the potential accrual of Government interest payments to contractors.

This rule would apply to contractor requests for payment under cost reimbursement contracts. An analysis of data in the Federal Procurement Data System (FPDS) revealed that cost reimbursement contracts are primarily awarded to large businesses. FPDS data compiled over the past three fiscal years (FY2013 through FY2015) showed an average of 311 active cost reimbursement NASA contracts, of which 141 (approximately 45%) were awarded to small businesses. However, there is no significant economic or administrative cost impact to small or large businesses because the rule will have a positive benefit in the way of fewer voucher rejections, rework, and payment delays. The rule does not contain additional reporting requirements, recordkeeping, or other compliance requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternative approaches were considered, because this approach will have minimal impact on small entities.

NASA invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (NFS Case 2016–N025), in correspondence.

## V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35); however, these changes to the NFS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0070, entitled Payments—FAR Sections Affected: 52.232–1 thru 52.232–4 and 52.232–6 thru 52.232–11.

## VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Administrator of the National Aeronautics and Space Administration that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action to revise the submission of vouchers for payment process is necessary to avert the rejection of contractor payment requests and potential payment delays, which will result in annual cost avoidance to the Government of approximately $383,000. In addition, we anticipate the Government potentially avoiding approximately $134,000 in late payment interest charges.

Section 893 of the National Defense Authorization Act for Fiscal Year 2016 prohibits the Defense Contract Audit Agency (DCAA) from performing audit work for non-Defense Agencies. NASA had delegated to DCAA the task of reviewing contractor requests for payment under our cost type contracts. This interim rule is needed to ensure that contractors have the correct procedures for submitting vouchers for payment. The existing contract payment clause has submittal of vouchers to DCAA for review, however, DCAA is no longer reviewing and approving contractor payment requests for NASA. Furthermore, if contractors continue to submit payment requests to DCAA, DCAA will reject them causing a delay in contractor payments. In turn, this will cause additional effort for contractors to rework and resubmit the voucher for payment. Immediate implementation of this rule will prevent unnecessary rework and resubmission of payment requests by the contractor and preclude delayed payments resulting in annual cost avoidance of approximately $383,000. This interim rule ensures prompt awareness of and compliance by contractors with the new submission of vouchers procedures. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), NASA will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 1816, 1832, 1842, and 1852**

Government procurement.

**Manuel Quinones,**
*NASA FAR Supplement Manager.*

Accordingly, 48 CFR parts 1816, 1832, 1842, and 1852 are amended as follows:

■ 1. The authority citation for parts 1816, 1832, and 1852 continues to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

## PART 1816—TYPES OF CONTRACTS

### 1816.307–70 [Amended]

■ 2. Amend section 1816.307–70 by removing and reserving paragraph (e).

## PART 1832—CONTRACT FINANCING

■ 3. Add subpart 1832.9 to read as follows:

### Subpart 1832.9—Prompt Payment

Sec.
1832.908 Contract clauses.
1832.908–70 Submission of Vouchers.

### Subpart 1832.9—Prompt Payment

### 1832.908 Contract clauses.

### 1832.908–70 Submission of Vouchers.

Insert clause 1852.232–80, Submission of Vouchers for Payment, in all cost-reimbursement solicitations and contracts.

## PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. The authority citation for part 1842 is revised to read as follows:

**Authority:** 51 U.S.C. 20113(a) and 48 CFR chapter 1.

### Subpart 1842.71 [Removed and Reserved]

■ 5. Remove and reserve subpart 1842.71.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 1852.216–87 [Removed and Reserved]

■ 6. Remove and reserve section 1852.216–87.

■ 7. Add section 1852.232–80 to read as follows:

### 1852.232–80 Submission of Vouchers for Payment.

As prescribed in 1832.908–70, insert the following clause:

**Submission of Vouchers for Payment (Sep 2016)**

(a) The designated payment office is the NASA Shared Services Center (NSSC) located at FMD Accounts Payable, Bldg. 1111, Jerry Hlass Road, Stennis Space Center, MS 39529.

(b) Except for classified vouchers, the Contractor shall submit all vouchers electronically using the steps described at NSSC's Vendor Payment information Web site at: *https://www.nssc.nasa.gov/vendorpayment.* Please contact the NSSC Customer Contact Center at 1–877–NSSC123 (1–877–677–2123) with any additional questions or comments.

(c) *Payment requests.* (1) The payment periods designated in the payment clause(s) contained in this contract will begin on the date a proper request for payment is received by the NSSC payment office specified in paragraphs (a) and (b) of this section. Vouchers shall be prepared in accordance with the guidance provided by the NSSC at the following Web site: *https://answers.nssc.nasa.gov/app/answers/detail/a_id/6643.*

(2) Vouchers shall include the items delineated in FAR 32.905(b) supported by relevant back-up documentation. Back-up documentation shall include at a minimum, the following information:

(i) Breakdown of billed labor costs and associated contractor generated supporting documentation for billed direct labor costs to include rates used and number of hours incurred.

(ii) Breakdown of billed other direct costs (ODCs) and associated contractor generated supporting documentation for billed ODCs.

(iii) Indirect rate(s) used to calculate the amount of billed indirect expenses.

(d) *Non-electronic payment.* The Contractor may submit a voucher using other than the steps described at NSSC's Vendor Payment information through any of the means described at *https://www.nssc.nasa.gov/vendorpayment,* if any of the following conditions are met:

(1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment when the Government-wide commercial purchase card is used as the method of payment.

(2) The contract includes provision allowing the contractor to submit vouchers using other than the steps prescribed at NSSC's Vendor Payment information Web site. In such instances, the Contractor agrees to submit non-electronic payment requests using the method or methods specified in Section G of the contract.

(e) *Improper vouchers.* The NSSC Payment Office will notify the contractor of any apparent error, defect, or impropriety in a voucher within seven calendar days of receipt by the NSSC Payment Office. Inquiries regarding requests for payment should be directed to the NSSC as specified in paragraph (b) of this section.

(f) *Other payment clauses.* In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

(g) In the event that amounts are withheld from payment in accordance with provisions of this contract, a separate payment request for the amount withheld will be required before payment for that amount may be made.

(End of clause)

[FR Doc. 2016–22046 Filed 9–13–16; 8:45 am]
**BILLING CODE 7510–13–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Part 665

**[Docket No. 151023986–6763–02]**

**RIN 0648–XE284**

## Pacific Island Pelagic Fisheries; 2016 U.S. Territorial Longline Bigeye Tuna Catch Limits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final specifications.

**SUMMARY:** In this final rule, NMFS specifies a 2016 limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory (American Samoa, Guam, and the Northern Mariana Islands). NMFS will allow each territory to allocate up to 1,000 mt each year to U.S. longline fishing vessels in a valid specified fishing agreement. As an accountability measure, NMFS will monitor, attribute, and restrict (if necessary), catches of longline-caught bigeye tuna, including catches made under a specified fishing agreement. These catch limits and accountability measures support the long-term sustainability of fishery resources of the U.S. Pacific Islands and fisheries development in the U.S. territories.

**DATES:** The final specifications are effective September 9, 2016, through December 31, 2016. The deadline to submit a specified fishing agreement pursuant to 50 CFR 665.819(b)(3) for review is October 11, 2016.

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagic FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808–522–8220, fax 808–522–8226, or *www.wpcouncil.org.*

NMFS prepared environmental analyses that describe the potential impacts on the human environment that would result from the action. Copies of the environmental analyses, which include a 2015 environmental assessment (EA), a 2016 supplemental EA (2016 SEA), and a finding of no significant impact, identified by NOAA–NMFS–2015–0140, are available from *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0140,* or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** Jarad Makaiau, NMFS PIRO Sustainable Fisheries, 808–725–5176.

**SUPPLEMENTARY INFORMATION:** NMFS is specifying a catch limit of 2,000 mt of longline-caught bigeye tuna for each U.S. participating territory in 2016. NMFS is also authorizing each U.S. Pacific territory to allocate up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. longline fishing vessels permitted to fish under the Pelagic FEP. NMFS will monitor catches of longline-caught bigeye tuna by the longline fisheries of each U.S Pacific territory, including catches made by U.S. longline vessels operating under specified fishing agreements. The criteria that a specified fishing agreement must meet, and the process for attributing longline-caught bigeye tuna, will follow the procedures in 50 CFR 665.819—Territorial catch and fishing effort limits. When NMFS projects that a territorial catch or allocation limit will be reached, NMFS will, as an accountability measure, prohibit the catch and retention of longline-caught bigeye tuna by vessels in the applicable territory (territorial catch limit), and/or vessels in a specified fishing agreement (allocation limit).

You may find additional background information on this action in the preamble to the proposed specifications published on July 7, 2016 (81 FR 44249).

## Comments and Responses

On July 7, 2016, NMFS published the proposed specifications and request for public comments (81 FR 44249); the comment period closed on July 22, 2016. NMFS received five comments on the proposed specifications and on a draft of the SEA dated June 22, 2016, with comments submitted by individuals, the fishing industry, and non-governmental organizations. NMFS considered public comments in finalizing the 2016 SEA and in making its decision on this action. NMFS responds below to comments on the proposed specifications and the July 22, 2016, draft of the SEA.

### *Comments on the Proposed Specifications*

NMFS responds to comments on the proposed specifications, as follows:

*Comment 1:* Several commenters expressed general support for the action and the thorough and objective assessment of the potential impacts of the action.

*Response:* NMFS acknowledges the comments.

*Comment 2:* One commenter noted the action supports opportunities that promote U.S. fishermen supplying seafood markets, and is consistent with Federal regulations implementing Amendment 7 to the Pelagic FEP and the recent decision of the United States District Court of Hawaii (*Conservation Council for Hawaii* v. *NMFS, NO. CV 14–00528 LEK–RLP, 2015 WL 9459899 (D. Haw. 2015)*).

*Response:* NMFS agrees. In November of 2014, Plaintiffs Conservation Council of Hawaii, Turtle Island Restoration Network, and Center for Biological Diversity, filed a civil action in the U.S. District Court of Hawaii (CA 14–00528) seeking declaratory and injunctive relief to set aside NOAA's October 28, 2014, final rule implementing Amendment 7, and the 2014 bigeye tuna catch and allocation limit specifications (79 FR 64097, October 28, 2014). The final rule established the framework process (50 CFR 665.819) under which the Council may recommend, and NOAA may approve, longline limits for each U.S. Pacific territory. The rule also allows each territory to allocate a portion of the limit to qualifying pelagic permit-holders through specified fishing agreements, consistent with the conservation needs of the stock and applicable Western and Central Pacific Fisheries Commission (WCPFC) decisions. In December 2015, the U.S. District Court of Hawaii upheld the final rule implementing Amendment 7, finding that the final rule was consistent with WCPFC conservation and management decisions, and was not contrary to law.

Consistent with Amendment 7, NMFS will establish a limit of 2,000 mt of bigeye tuna for each U.S. Pacific territory for calendar year 2016. NMFS will also allow each territory to allocate through specified fishing agreements up to 1,000 mt of its 2,000-mt bigeye tuna limit to U.S. fishing vessels permitted under the Pelagic FEP. As documented in the 2015 EA and the 2016 SEA, NMFS is satisfied that this action would not impede WCPFC conservation and management objectives to eliminate overfishing on bigeye tuna. We also anticipate that this action may provide some stability to bigeye tuna markets, some positive economic benefits for the fishery and associated businesses, and net benefits to the Nation.

*Comment 3:* One commenter expressed concern that the proposed action could be detrimental to the Hawaiian bigeye tuna population because the amount of bigeye tuna removed from Hawaiian waters could potentially increase by 3,000 mt.

*Response:* Based on the best scientific information available described in Section 3.3.1 of the 2015 EA, NMFS disagrees that this action will result in localized or regional depletion of tuna stocks. Hawaii does not have a distinct bigeye tuna population. Bigeye tuna is a highly migratory species and considered by stock assessment scientists as a single Pacific-wide population. However, the stock is assessed as two separate stocks for international management purposes, with a western and central Pacific Ocean (WCPO) stock managed by the WCPFC and an eastern Pacific Ocean (EPO) stock managed by the Inter-American Tropical Tuna Commission (IATTC).

As described in the 2015 EA, the most recent 2014 WCPO bigeye assessment utilizes a spatially disaggregated MULTIFAN–CL model that separates the WCPO into nine regions. The Hawaiian Archipelago is located mostly in Region 2, with a small portion within Region 4. Regions 2 and 4 share longitudinal boundaries of 170° E. and 150° W., but are latitudinal separated at 20° N. The 2014 WCPO bigeye stock assessment showed that the regions with the highest impact to bigeye tuna in the WCPO were Regions 3 and 4—representing 88 percent of bigeye tuna fishing mortality. Regions 3 and 4 comprise the tropical Equatorial zone between 20° N. and 10° S., within which the area between 10° N. and 10° S. is distinguished as the core Equatorial zone for the tropical tuna longline and purse seine fisheries. The highest levels of purse seine and longline fishing mortality on bigeye tuna occur in this core Equatorial zone.

The majority of fishing effort by the U.S. longline fishery operating out of Hawaii occurs north of 20° N. in Region 2, where fishing mortality for bigeye is much lower than in Regions 3 and 4. Moreover, 98 percent of bigeye tuna caught by this fishery occurs north of 10° N., which is an area outside of the core Equatorial zone. Region 2 also has the highest ratio of exploited spawning biomass to unexploited spawning biomass, meaning that it has the lowest level of depletion because of fishing pressure.

Fishing by Hawaii longline vessels occurs principally in Regions 2 and 4, and the stochastic projections shown in Section 4 of the 2015 EA indicate that, compared to no action, the impact of transferring up to 3,000 mt of bigeye tuna from a U.S. territory to Hawaii longline vessels would result in a 2.5 percent change to the ratio of bigeye fishing mortality (F) to fishing mortality at MSY ($F_{MSY}$). Specifically, the analysis in the 2015 EA predicts an end to overfishing of bigeye by 2032 ($F_{2032}/F_{MSY} = 0.93$) for the alternative under which NMFS would not allow any U.S. territory to allocate any tuna to Hawaii longline vessels. Assuming the maximum utilization of territorial bigeye tuna limits and associated allocation limits under this action, $F_{2032}/F_{MSY}$ increases slightly to 1.007. This mortality rate is associated with a 55 percent probability of overfishing and is virtually indistinguishable from the overfishing threshold of $F/F_{MSY} > 1.0$. Under this action, median total biomass (B) would be $B_{2032}/B_{MSY} = 1.510$ indicating that biomass would be above the level of biomass that produces MSY, and is associated with a zero percent probability of overfishing. Taken together, the analysis indicates that the full utilization of territorial limits, including the transfer of up to 3,000 mt of bigeye tuna under specified fishing arrangements, would have a negligible effect on the overall stock status of bigeye tuna, and would not impede WCPFC conservation measures to eliminate bigeye overfishing in the WCPO.

*Comments on the Draft Supplemental Environmental Assessment*

NMFS responds to comments on the draft SEA dated June 22, 2016, as follows:

*Comment 1:* Two commenters questioned whether the best scientific information available supports Senator Schatz's proposal to expand the Papahanaumokuakea Marine National Monument (PMNM). The commenters questioned whether the proposed expansion would positively benefit target and non-target fish stocks, promote productive fisheries outside the PMNM, and combat climate change. The commenters noted that the PMNM expansion is a foreseeable future action that is reasonably expected to occur, and requested that NMFS evaluate the potential direct and cumulative effects of the proposed expansion on Hawaii pelagic fisheries, and living marine resources, including coral reefs, bigeye tuna, other highly migratory fish stocks, sea turtles, sea birds, and marine mammals.

*Response:* On August 26, 2016, shortly before publication of this final specification, President Barack Obama issued Presidential Proclamation 9478 (August 26, 2016, 81 FR 60225), expanding the PMNM to the full extent of the U.S. Exclusive Economic Zone around the Northwestern Hawaiian Islands west of 163° W. The Proclamation establishes the PMNM Expansion for the protection of the objects within its boundaries.

That Presidential action is separate from and is not a part of the current action, which specifies a 2016 catch limit for longline-caught bigeye tuna for participating territories and allows each territory to allocate a portion of that annual catch to U.S. longline fishing vessels. The National Environmental Policy Act requires Federal agencies to consider an action's cumulative effects, together with past, present, and reasonably foreseeable Federal, state, and private actions. The commenters do not specify what impacts the Proclamation might have that they believe should be considered in a cumulative effects analysis for the 2016 bigeye tuna final specifications.

The specification of territorial longline bigeye tuna catch and allocation limits is an action of limited duration that will conclude at the end of 2016. The Proclamation has just occurred, and thus there is no evident useful information about the protections it affords that is available to inform a cumulative effects analysis. Further, in light of the short-term nature of the current action, the prohibition on commercial fishing in the recent Proclamation is not likely to have a cumulative effect on the availability or quantity of tuna that provides the basis for the 2016 specifications. NMFS has added a new section to this effect in the 2016 SEA (Section 2.5.4, Papahanaumokuakea Marine National Monument Expansion).

*Comment 2:* One commenter questioned the scientific basis for expanding the PMNM, and noted that if the proposal has been peer reviewed, NMFS should also be evaluating the effects of the Rose Atoll, Mariana Trench, and Pacific Remote Islands Marine National Monuments on tuna stocks and other highly migratory species.

*Response:* Like the recent Proclamation expanding the PMNM, the Presidential Proclamations designating the Rose Atoll (74 FR 1577, January 12, 2009), Mariana Trench (74 FR 1557, January 12, 2009), and Pacific Remote Islands Monuments (74 FR 1565, January 12, 2009; 79 FR 58645, September 29, 2009), and implementing regulations (78 FR 32996, June 2, 2013) are prior Federal actions, and are not part of this action. Therefore, as explained in Section 3.0 (Cumulative Impacts) of the 2016 SEA, there is no new information on any other component of the environment that would affect the cumulative effects analysis contained in the 2015 EA.

## Classification

The Regional Administrator, NMFS PIR, determined that this action is necessary for the conservation and management of Pacific Island fishery resources, and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for the certification in the proposed rule, and we do not repeat it here. NMFS received no comments on this certification; as a result, a regulatory flexibility analysis is not required, and none has been prepared.

On December 29, 2015, NMFS issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016.

Pursuant to the RFA and prior to July 1, 2016, NMFS developed a certification for this regulatory action using SBA size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. All of the entities directly regulated by this regulatory action are commercial fishing businesses and were considered small under the SBA size standards and, thus, they all would continue to be considered small under the new standard. Accordingly, NMFS has determined that the new size standard does not affect analyses prepared for this regulatory action.

This rule it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1) because it is a substantive rule that relieves a restriction. This rule allows all U.S. vessels identified in a valid specified fishing agreement to resume fishing in the WCPO after NMFS closed the longline fishery for bigeye tuna both there and in the EPO.

NMFS closed the U.S. pelagic longline fishery for bigeye tuna in the WCPO, on July 22, 2016, because the fishery reached the 2016 catch limit (81 FR 45982, July 15, 2016). On July 25, 2016, NMFS also closed the U.S. pelagic longline fishery for bigeye tuna for vessels greater than 24 m in the EPO because the fishery reached the 2016 catch limit (81 FR 46614, July 18, 2016). This final rule would relieve the restriction of the fishery closure in the WCPO by allowing all U.S. vessels to fish for bigeye tuna in the WCPO under a valid specified fishing agreement with one or more U.S Pacific territory. This would alleviate some of the impacts to the U.S. pelagic longline fishery resulting from the two fishery closures, and may provide positive economic benefits for the fishery and associated businesses, and net benefits to the public and the Nation.

This action is exempt from review under E.O. 12866 because it contains no implementing regulations.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: September 8, 2016.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2016–22111 Filed 9–9–16; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

**Federal Register**
Vol. 81, No. 178
Wednesday, September 14, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### 19 CFR Part 111

**[Docket No. USCBP–2016–0059]**

**RIN 1651–AB07**

## Modernization of the Customs Brokers Examination

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to update the U.S. Customs and Border Protection (CBP) regulations concerning the customs broker's examination provisions. Specifically, this document proposes to transition to a computer automated customs broker examination, increase the examination fee to cover the increased cost of delivering the exam, and adjust the dates of the examination to account for the fiscal year transition period and payment schedule requirements.

**DATES:** Comments must be received on or before November 14, 2016.

**ADDRESSES:** You may submit comments, identified by *docket number,* by *one* of the following methods:

- Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP–2016–0059.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** John Lugo, Broker Management Branch, Office of Trade, (202) 863–6015, *John.lugo@cbp.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information or authority that support such recommended change.

### Background

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides, among other things, that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for disciplinary action against brokers that have engaged in specific infractions. This section also provides that an examination may be conducted to assess an applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in title 19 of the Code of Federal Regulations, part 111 (19 CFR part 111). Part 111 sets forth the regulations regarding, among other things, the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers. These regulations also include the qualifications required of applicants and the procedures for applying for licenses and permits, including examination procedures and requirements.

In this rule, CBP proposes to modernize the customs broker examination provisions contained in 19 CFR part 111 by allowing for automation of the examination, by increasing the fee to cover the increased cost of delivering the exam, and by adjusting the dates of the examination to account for the fiscal year transition period and payment schedule requirements.

### Discussion of Proposed Amendments

#### *Subpart B, Procedure To Obtain License or Permit*

Section 111.11 (19 CFR 111.11) provides the basic requirements for individuals, partnerships, and associations or corporations to obtain a customs broker's license. An applicant for an individual broker's license must be a U.S. citizen, at least 21 years old, of good moral character, and must attain a passing grade on a written examination. (19 CFR 111.11(a).) Paragraph (a)(4) of section 111.11 currently refers to a "written" examination. To allow for greater flexibility in test administration and for the transition from a paper and pencil format to computer automated exams, CBP proposes to remove the word "written" before examination in paragraph (a)(4) (19 CFR 111.11(a)(4)). The automated examination will be held at private testing centers and administered by professional proctors. These spaces will each be equipped with computers programed to accommodate the examination while blocking web access. Examinees are only permitted access to those resources allowed to be brought into the examination as listed on *cbp.gov.* Examination automation presents many benefits for both the applicant as well as CBP. First, automation will provide faster notification of test scores to the examinee. In addition, CBP expects examination automation to help standardize the testing environment and equipment for all examinees across the country. For CBP, automation decreases the staff and administrative resources necessary to conduct the examination.

Section 111.12 (19 CFR 111.12) sets forth the license application requirements. Paragraph (a) of section 111.12 currently includes two references to a "written" examination. CBP proposes to remove the word "written" before examination in both places that it appears in paragraph (a) for the reasons set forth above.

Section 111.13 (19 CFR 111.13) provides details and procedures for the customs broker written examination. Reference to a "written" examination currently appears in the heading and throughout section 111.13. Again, CBP proposes to remove the word "written" in references to the examination throughout the section as well as in the section heading.

In addition, paragraph (a) currently states that the examination is graded at CBP Headquarters. Currently, the Office of Personnel Management (OPM) administers the examination contract with the testing facilities. To allow for greater flexibility in grading the examination, including grading by OPM or an OPM contractor, CBP proposes to remove the language requiring that the examination will be graded at CBP Headquarters. Removing this restriction will also reduce the time required to grade the examination.

Paragraph (b) of section 111.13 (19 CFR 111.13(b)) sets forth the basic requirements, date, and place of the examination. The regulations currently provide that examinations will be given on the first Monday in April and October. In the past few years, CBP has started the new fiscal year operating under a Continuing Resolution passed by the U.S. Congress. This fiscal uncertainty has created a logistical challenge in meeting the payment schedule required by the OPM. To allow more time between the start of the fiscal year and the October examination, CBP proposes to adjust the examination dates to the fourth Monday in April and October. In addition, while the current regulations set forth when the examination will be offered, CBP proposes to publish additional notice of each examination on its Web site to increase transparency and the availability of examination information. CBP has instituted an electronic registration process for the broker examination and proposes to amend the regulations to reflect this change in process.

The current examination fee is $200. (19 CFR 111.13(b).) As part of the review of the customs brokers regulations, CBP conducted a fee study and determined that a fee of $390 is necessary to recover the costs associated with administering the customs broker license examination. A fee study documenting the proposed fee change, entitled "Customs Broker License Examination Fee Study," has been included in the docket of this rulemaking (Docket No. USCBP–2016–0059). The examination fee has remained at $200 since 2000 and has not been adjusted to account for inflation. In addition, the cost to deliver the examination is expected to increase. CBP has relied upon port staff to administer the examination using mainly government facilities and a few hotel sites. With automated examinations, CBP will need to hire proctors and reserve testing centers. As a result, CBP proposes to increase the examination fee from $200 to $390.

Paragraph (c) of section 111.13 (19 CFR 111.13(c)) provides for a special examination in the case that a partnership, association, or corporation loses the member or officer with the individual broker's license that is required by the regulations. Under the current regulation, the party seeking a special examination bears the cost of CBP's developing and administering the examination. Since the examination is offered twice each year, however, firms have a large pool of licensed brokers from which to find a replacement. To date, CBP has never used the special examination provision. Consequently, CBP has determined that the special examination provision is unnecessary and proposes to remove current paragraph (c) and redesignate the remaining paragraphs (d), (e), and (f) as (c), (d), and (e). A corresponding amendment is proposed to remove the sentence addressing failure to appear for a special examination in redesignated paragraph (c).

Current paragraph (d) (19 CFR 111.11(d)) explains the procedure when an applicant fails to appear for an examination. As noted above, CBP proposes to redesignate paragraph (d) as paragraph (c). In addition, CBP proposes to amend the CBP contact who should receive notice by removing the reference to the port director and instead directing the applicant to the Broker Management Branch within the Office of Trade.

Current paragraph (f) (19 CFR 111.11(f)) describes the procedure for appealing a failing grade on the examination. As noted above, CBP proposes to redesignate paragraph (f) as paragraph (e). In addition, CBP proposes to amend the CBP contact for appeals by removing the reference to Trade Policy and Programs and instead directing the applicant to the Broker Management Branch within the Office of Trade. Lastly, CBP proposes to update the cross reference to current paragraph (e) to correspond with the redesignated paragraph (d).

*Subpart E, Monetary Penalty and Payment of Fees*

As discussed above, CBP has conducted a fee study to review the broker examination fees. The fee study documenting the proposed fee changes, entitled "Customs Broker License Examination Fee Study," has been included in the docket of this rulemaking (Docket No. USCBP–2016–0059). The current broker examination fee set forth in paragraph (a) of section 111.96 (19 CFR 111.96(a)) is $200. Based on the findings of the fee study, CBP proposes to increase the examination fee referred to in paragraph (a) from $200 to $390.

In addition, paragraph (e) (19 CFR 111.96(e)) of section 111.96 describes the method of payment. CBP proposes a nomenclature update by replacing the phrase United States Customs Service with U.S. Customs and Border Protection. Lastly, to allow for greater flexibility in accepting payments, CBP proposes to add the language "or other CBP approved payment method" to the end of paragraph (e).

## Executive Orders 13563 and 12866

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed this regulation. CBP has prepared the following analysis to help inform stakeholders of potential impacts of this proposed rule.

*1. Purpose of the Rule*

Customs brokers are private individuals and/or business entities (partnerships, associations or corporations) that are regulated and empowered by CBP to assist importers and exporters in meeting federal requirements governing imports and exports. Customs brokers have an enormous responsibility to their clients and to CBP that requires them to properly prepare importation and exportation documentation, file these documents timely and accurately, classify and value goods properly, pay duties and fees, safeguard their clients' information, and protect their license from misuse.

CBP currently licenses brokers who meet a certain set criteria. One criterion is that each prospective broker must first pass a broker license examination. CBP's current paper based examination method will soon no longer be available and so CBP is shifting to an all-electronic examination. The all-electronic examination has some benefits to both CBP and the trade, such as a faster processing time, which lets examinees know their results more quickly and efficiently, and a significant reduction in administrative duties for CBP employees. However, administering this new electronic examination is also more expensive. Additionally, the current $200 fee does not cover the costs of the current paper examination. CBP is therefore proposing to increase the examination fee from $200 to $390 in order to fully cover all of CBP's costs of administering the broker examination.

CBP is also proposing to change the date of the semi-annual customs broker examination from the first Monday in October and April to the fourth Monday in October and April for easier administration.

*2. Background*

It is CBP's responsibility to ensure that only qualified individuals and business entities can perform customs business on another party's behalf. The first step in meeting the eligibility requirements for a customs broker license requires an individual to pass the customs broker license examination. Currently paper-based, the customs broker examination is an open-book examination consisting of 80 multiple-choice questions.

An individual must meet the following criteria in order to be eligible to take the customs broker examination:

- Be a U.S. citizen at least 18 years of age;[1]
- Not be an employee of the U.S. federal government; and
- Pay a $200 examination fee.

The customs broker examination is offered semi-annually, in April and October, and an examinee has four and a half (4.5) hours to complete it. Based on prior year exams from 2004 to 2013, CBP estimates that there will be approximately 2,600 examinees per year, or 1,300 examinees per session. Currently the broker examination is given at 50 testing locations around the country. CBP anticipates that changing the examination format from paper-based to electronic would result in no change in the number of testing locations in the country; the only change would be the type of testing location. According to the Broker Management Branch, the examination is currently administered at hotels and ports throughout the country. In the future, the examination will instead be held at privately operated formal testing locations.

Beginning in April 2017, the current paper testing option will no longer be available and the broker examination will be fully electronic. Despite the higher costs of an electronic exam, it has many favorable features which would benefit both CBP and the examinees, including shorter wait times for examinees to get their test results and a reduction in the time CBP staff spends on administrative matters related to the exam, such as fielding questions from examinees and mailing test result notices.

*3. Costs*

As discussed above, CBP currently charges a $200 fee for the customs broker license examination. This fee is used to offset the costs associated with providing the services necessary to operate the customs broker license examination. Based on a recently completed fee study entitled, "Customs Broker License Examination Fee Study," CBP has determined that these fees are no longer sufficient to cover its costs.[2] Currently, examinees go to either a port or to a rented event space in a hotel to take the paper examination with a 35-page test booklet and a scantron sheet, which must subsequently be collected and graded. The new all-electronic version of the examination will be administered entirely on a computer where the examinees answer the questions directly on the screen and the examination is graded automatically. As the electronic examination uses all private facilities with professional proctors, this automated method will be more expensive than the paper examination. Furthermore, the current fee is not enough to cover even the current costs of administering the examination. As stated above, the current $200 fee has not been changed since 2000. According to data provided by CBP's Broker Management Branch, administrative and testing costs have increased since the fee was last changed. This increase in administrative fees coupled with switching to an all-electronic exam, makes it necessary to increase the customs broker examination fee from $200 to $390 for CBP to recover all of its costs to administer the customs broker examination.

CBP has determined that the fee of $390 is necessary to recover the costs associated with administering the customs broker license examination once the examination is made electronic. The customs broker examination is an established service provided by CBP that already requires a fee payment. Though the change to an electronic examination raises the costs of the examination and also has some benefits for the examinees, that change is happening independently of this rule. Absent this rule, CBP would be operating the examination at a loss and this fee is intended to offset that loss. As such, a change in the fee is not a net cost to society, but rather a transfer payment from test takers to the government. CBP does recognize, however, that the proposed fee change may have a distributional impact on prospective customs brokers. In order to inform stakeholders of all potential effects of the proposed rule, CBP has analyzed the distributional effects of the proposed rule in section "5. Distributional Impacts."

*4. Benefits*

As discussed above, CBP is proposing to increase the customs broker license examination fee from $200 to $390. The broker examination fee was last changed in 2000 when it was reduced from $300 to the current fee of $200. The lower cost paper-based examination that is currently being administered is being replaced by an all-electronic examination in an ongoing effort to fully modernize the customs broker testing procedure. This proposed fee increase will allow CBP to fully recover all of its costs, including those to provide a fully electronic version of the customs broker examination beginning in April 2017. As discussed above, the fee increase is neither a cost nor a benefit to this rule since the broker examination fee is already an established fee. Thus, the proposed fee increase is considered a transfer payment. As stated above, in order to inform stakeholders of all potential effects of the proposed rule, CBP has analyzed the distributional effects of the proposed rule in section "5. Distributional Impacts."

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[1] Although U.S. citizens at least 18 years old may take the broker license exam, a U.S. citizen must be at least 21 years old to apply to become a licensed customs broker. An individual has three years, from the time s/he takes the customs broker exam, to apply to become a licensed customs broker.

[2] The fee study is included in the docket of this rulemaking (Docket No. USCBP–2016–0059).

In addition to proposing an increase in the examination fee, CBP is proposing to change the date the examination is given from the first Monday in October and April to the fourth Monday in October and April. Administering the examination on the first Monday in October is administratively difficult because it is too close to the conclusion of the Federal Government's fiscal year at the end of September. With this rule's changes, CBP and the examinees will benefit through greater predictability in years where federal budgets are uncertain.

*5. Distributional Impact*

Under the proposed rule, the customs broker license examination fee will increase from $200 to $390 in order for CBP to fully recover all of its costs to administer the broker examination. As noted above, these costs are increasing due to a shift in the administration of the examination that will go into effect beginning with the April 2017 examination.

The proposed customs broker license examination fee will cost individuals an additional $190 when they register to take the customs broker license examination. As discussed above, CBP estimates that there will be 2,600 examinees per year (1,300 per session) who will take the customs broker license examination. Using this estimate and the additional cost that each examinee will incur, CBP estimates that the proposed fee increase will result in a transfer payment to the government of approximately $494,000 per year (2,600 examinees per year * $190 proposed fee increase = $494,000).

**Regulatory Flexibility Act**

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

The proposed rule will apply to all prospective brokers who take the broker examination. The fee is paid by the individual taking the broker examination and individuals are not considered small entities under the Regulatory Flexibility Act. However, many of these individuals are sole proprietors or are reimbursed for this expense by their brokerage, so we consider the impact on these entities. As shown in Exhibit 1 below, approximately 96 percent of businesses entities in this North American Industry Classification (NAICS) code are small. As this rule would affect any prospective broker or his/her employer, regardless of its size, this rule has an impact on a substantial number of small entities.

The direct impact of this proposed rule on each individual customs broker examinee, or his/her employer, is the fee increase of $190. To assess whether this is a significant impact, we examine the annual revenue for customs brokers. The U.S. Census Bureau categorizes customs brokers under the NAICS code 488510. In addition to customs brokers, this NAICS code also includes freight forwarders.[3] The Small Business Administration (SBA) publishes size standards that determine the criteria for being considered a small entity for the purposes of this analysis. The SBA considers a business entity classified under the 488510 NAICS code as small if it has less than $15 million in annual receipts. We obtained the number of firms in each revenue category provided by the U.S. Census Bureau (see Exhibit 1 below). To estimate the average revenue of all firms under this NAICS code, we first assumed that each firm in each revenue category had receipts of the midpoint of the range. For example, we assumed that the 4,354 firms with annual receipts of between $100,000 and $499,000 had average receipts of $300,000. We then used the number of firms in each category to calculate the weighted average revenue across all small firms. Using this method, we estimate that the weighted average revenue for small businesses in this NAICS code is $1,496,197. The $190 increase in the broker examination fee, then, represents 0.01 percent of the weighted average annual revenue for brokers. We acknowledge that a company might pay for more than one examination annually which would increase the total cost to that company, but the impact would still be small. For example, even if a company paid for 10 exams annually, the total cost of $1,900 would represent 0.1 percent of the weighted average annual revenue for brokers. CBP does not consider 0.01 percent or even 0.1 percent of revenue to be a significant economic impact. Accordingly, CBP certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

EXHIBIT 1—BUSINESS ENTITY DATA FOR NAICS CODE 488510

| Annual receipts (Midpoint) ($) | Number of firms | Small |
|---|---|---|
| <100,000 (50,000) | 1,834 | Yes. |
| 100,000–499,999 (300,000) | 4,354 | Yes. |
| 500,000–999,999 (750,000) | 2,040 | Yes. |
| 1,000,000–2,499,999 (1,750,000) | 2,300 | Yes. |
| 2,500,000–4,999,999 (3,750,000) | 1,087 | Yes. |
| 5,000,000–7,499,999 (6,250,000) | 427 | Yes. |
| 7,500,000–9,999,999 (8,750,000) | 242 | Yes. |
| 10,000,000–14,999,999 (12,500,000) | 233 | Yes. |
| >15,000,000 | 548 | No. |
| *Total* | *13,065* | *96 Percent are Small (12,517/13,065).* |

Source: U.S. Census Bureau.

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[3] *http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=488510&search=2012%20NAICS%20Search.*

## Signing Authority

This document is being issued in accordance with 19 CFR 0.2(a), which provides that the authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(l) of the Homeland Security Act of 2002. Accordingly, this proposed rule to amend such regulations may be signed by the Secretary of Homeland Security (or his delegate).

## List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements.

## Proposed Amendments to the CBP Regulations

For the reasons set forth in the preamble, part 111 of title 19 of the Code of Federal Regulations (19 CFR part 111) is proposed to be amended as set forth below.

## PART 111—CUSTOMS BROKERS

■ 1. The authority citation for part 111 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498; Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

### § 111.11 [Amended]

■ 2. In § 111.11, paragraph (a)(4) is amended by removing the words "a written" and adding in its place the word "an".

### § 111.12 [Amended]

■ 3. In § 111.12, paragraph (a) is amended by removing the word "written" from the two places that it appears in the fifth and sixth sentences.

■ 2. In § 111.13:

■ a. The section heading is revised;

■ b. Paragraph (a) is amended by:

■ 1. Removing the word "written" from the first sentence;

■ 2. Removing the words "and graded at" from the second sentence and adding in their place the word "by"; and

■ 3. Removing the phrase "Headquarters, Washington, DC" from the second sentence;

■ c. Paragraph (b) is revised;

■ d. Paragraph (c) is removed;

■ e. Paragraph (d) is redesignated as paragraph (c) and revised;

■ f. Paragraph (e) is redesignated as paragraph (d); and

■ g. Paragraph (f) is redesignated as paragraph (e) and revised.

The revisions read as follows:

### § 111.13 Examination for individual license.

* * * * *

(b) *Basic requirements, date, and place of examination.* In order to be eligible to take the examination, an individual must on the date of examination be a citizen of the United States who has attained the age of 18 years and who is not an officer or employee of the United States Government. CBP will publish a notice announcing each examination on its Web site. Examinations will be given on the fourth Monday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the **Federal Register** an appropriate notice of a change in the examination date. An individual who intends to take the examination must complete the electronic application at least 30 calendar days prior to the scheduled examination date and must remit the $390 examination fee prescribed in § 111.96(a) at that time. CBP will give notice of the exact time and place for the examination.

(c) *Failure to appear for examination.* If a prospective examinee advises the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, electronically in a manner specified by CBP at least 2 working days prior to the date of a regularly scheduled examination that he will not appear for the examination, CBP will refund the $390 examination fee referred to in paragraph (b) of this section.

* * * * *

(e) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written appeal with the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, within 60 calendar days after the date of the written notice provided for in paragraph (d) of this section. CBP will provide to the examinee written notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by writing to the Executive Assistant Commissioner, Office of Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

### § 111.96 [Amended]

■ 3. In § 111.96:

■ a. Paragraph (a) is amended by removing the word "written" from the second sentence and removing the phrase "$200 examination fee" from the second sentence and adding in its place the phrase "$390 examination fee"; and

■ b. Paragraph (e) is amended by removing the words "United States Customs Service" and adding in their place the words "U.S. Customs and Border Protection, or by another CBP-approved payment method".

Dated: September 8, 2016.

**Jeh Charles Johnson,**

*Secretary.*

[FR Doc. 2016–21935 Filed 9–13–16; 8:45 am]

BILLING CODE 9111–14–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### 23 CFR Chapter I

**[Docket No. FHWA–2016–0002]**

**RIN 2125–AF70**

## Tribal Transportation Self-Governance Program; Negotiated Rulemaking Second Meeting

**AGENCY:** Federal Highway Administration, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** This document announces the second meeting of the Tribal Transportation Self-Governance Program (TTSGP) Negotiated Rulemaking Committee. This notice also announces additional alternate committee members.

**DATES:** The second meeting of the TTSGP Negotiated Rulemaking Committee is scheduled for September 13–15, 2016, from 8:00 a.m. until 5:00 p.m.

**ADDRESSES:** The second TTSGP Negotiated Rulemaking Committee meeting will be held at the Eastern Federal Lands Highway Division, Loudoun Tech Center, 21400 Ridgetop Circle, Sterling, VA 20166–6511.

**FOR FURTHER INFORMATION CONTACT:** Robert W. Sparrow, Designated Federal Official, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–9483 or at *robert.sparrow@dot.gov.* Vivian Philbin, Assistant Chief Counsel, 12300 West Dakota Avenue, Lakewood, CO 80228. Telephone: (720) 963–3445 or at *vivian.philbin@dot.gov.*

Additional information may be posted on the FHWA Tribal Transportation Program Web site at *https://flh.fhwa.dot.gov/programs/ttp/* as it comes available.

**SUPPLEMENTARY INFORMATION:**

### Background

As required by Section 1121 of the Fixing America's Surface Transportation (FAST) Act, the Secretary shall, pursuant to a negotiated rulemaking process, develop a Notice of Proposed Rulemaking (NPRM) that contains the regulations required to carry the TTSGP. Section 1121 also requires that in establishing this committee, the Secretary will (1) apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States and (2) select the tribal representatives for the committee from among elected officials of tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities.

On July 27, 2016, at 81 FR 49193, FHWA published its list of the TTSGP Negotiated Rulemaking Committee. Since multiple submissions were not received from Tribes within the Bureau of Indian Affairs' Midwest or Rocky Mountain Regions, an alternate for those regions were not originally named. Since that time through the work of the primary committee members and others, additional submittals have been submitted. As a result of this effort, the following have been named as Alternate Tribal Representatives:

- MIDWEST REGION—Dean Branchaud, Executive Director of Tribal Engineering, Red Lake Band of Chippewa Indians, Red Lake, MN.
- ROCKY MOUNTAIN REGION—Connie Thompson, Transportation Planner, Fort Peck Assiniboine & Sioux Tribes, Poplar, MT.

Additional representatives or changes in the status of existing representatives may be forthcoming in future **Federal Register** Notices.

### Meeting Participation

The meeting will be open to the public. Time has been set aside during each day of the meeting for members of the public to contribute to the discussion and provide oral comments.

### Submitting Written Comments

Members of the public may submit written comments on the topics to be considered during the meeting by September 9, 2016, to Federal Docket Management System (FDMS) Docket Number FHWA–2016–0002. If you submit a comment, please include the docket number for this notice (FHWA–2016–0002). You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. The FHWA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FHWA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FHWA–2016–0002, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

#### *Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FHWA–2016–0002, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

#### *Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. The DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

### Future Committee Meetings and Rulemaking Calendar

Decisions with respect to future meetings will be made at the second meeting and from time to time thereafter. Notices of all future meetings will be shown on the FHWA TTP Web site at *https://flh.fhwa.dot.gov/programs/ttp/* at least 15 calendar days prior to each meeting.

Issued on: September 7, 2016.

**Gregory G. Nadeau,**

*Administrator, Federal Highway Administration.*

[FR Doc. 2016–22128 Filed 9–9–16; 4:15 pm]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

### 26 CFR Parts 1 and 301

### [REG–109086–15]

### RIN 1545–BN50

## Premium Tax Credit NPRM VI; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to a notice of proposed rulemaking.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking (REG–109086–15) published in the **Federal Register** on Friday, July 8, 2015 (81 FR 44557). The proposed regulations related to the health insurance premium tax credit (premium tax credit) and the individual shared responsibility provision. These proposed regulations affect individuals who enroll in qualified health plans through Health Insurance Exchanges (Exchanges, also called Marketplaces) and claim the premium tax credit, and Exchanges that make qualified health plan available to individuals and employers.

**DATES:** Written or electronic comments and requests for a public hearing that were being accepted by September 6, 2016.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Shareen Pflanz, (202) 317–4727; concerning the submission of comments and/or request for a public hearing, Oluwafunmilayo Taylor (202) 317–6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The notice of proposed rulemaking (REG–109086–15) that is the subject of this correction is under section 36B of the Internal Revenue Code.

### Need for Correction

As published, the notice of proposed rulemaking (REG–109086–15) contains errors that are misleading and are in need of clarification.

## Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–109086–15), that are subject to FR Doc. 2016–15940, are corrected as follows:

■ 1. On page 44566, in the preamble, second column, the eighth to the tenth line from the top of the column, the language "dental benefits is added to the premium allocable to pediatric dental benefits for the lowest cost stand-alone dental plan" is corrected to read "dental benefits is added to the lowest-cost portion of the premium for a stand-alone dental plan that is allocable to pediatric dental benefits".

■ 2. On page 44566, in the preamble, second column, fourteenth to the sixteenth line from the top of column, the language "added to the premium allocable to the pediatric dental benefits for the second lowest-cost stand-alone dental plan" is corrected to read "added to the second-lowest-cost portion of the premium for a stand-alone dental plan that is allocable to pediatric dental benefits".

### § 1.36B–0 [Corrected]

■ 3. On page 44569, first column, the entry for (f)(9), the language "(9) Effective date." is corrected to read "(9) Examples.".

■ 4. On page 44569, first column, the entry (f)(10) is removed.

■ 5. In § 1.36B–3 entries "(m) [Reserved]." and "(n) *Effective/applicability date.*" are added.

### § 1.36B–2 [Corrected]

■ 6. On page 44571, third column, the second line of paragraph (e)(1), the language "Except as provided in paragraph (f)(2) of" is corrected to read "Except as provided in paragraph (e)(2) of".

### § 1.36B–3 [Corrected]

■ 7. On page 44574, third column, the second line of paragraph (n)(1), the language "Except as provided in paragraph (o)(2)" is corrected to read "Except as provided in paragraph (n)(2)".

■ 8. On page 44574, third column, paragraph (n)(2) of § 1.36B–3 is corrected to read as follows:

* * * * *

(n) * * *

(2) Paragraphs (c)(4), (d)(1) and (2) apply to taxable years beginning after December 31, 2016. Paragraph (f) of this section applies to taxable years beginning after December 31, 2018. Paragraphs (d)(1) and (2) of § 1.36B–3 as contained in 26 CFR part I edition revised as of April 1, 2016, apply to taxable years ending after December 31, 2013, and beginning before January 1, 2017. Paragraph (f) of § 1.36B–3 as contained in 26 CFR part I edition revised as of April 1, 2016, applies to taxable years ending after December 31, 2013, and beginning before January 1, 2019.

* * * * *

**Martin V. Franks,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).*

[FR Doc. 2016–22067 Filed 9–13–16; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF JUSTICE

### 28 CFR Parts 0 and 44

### [CRT Docket No. 130]

### RIN 1190–AA71

## Revision of Standards and Procedures for the Enforcement of Section 274B of the Immigration and Nationality Act

**AGENCY:** Department of Justice.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** On August 15, 2016, the Department of Justice (Department) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** proposing to revise regulations implementing section 274B of the Immigration and Nationality Act, concerning unfair immigration-related employment practices. The comment period for the NPRM is scheduled to close on September 14, 2016. The Department is extending the comment period by 30 days until October 14, 2016, in order to provide additional time for the public to prepare comments.

**DATES:** The comment period for the NPRM published on August 15, 2016 (81 FR 53965), is extended. All comments must be received by October 14, 2016. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until midnight Eastern Time at the end of the day.

**ADDRESSES:** You may submit written comments, identified by Docket No. CRT 130, by ONE of the following methods:

*Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* 950 Pennsylvania Avenue NW.—NYA, Suite 9000, Washington, DC 20530.

*Hand Delivery/Courier:* 1425 New York Avenue, Suite 9000, Washington, DC 20005.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. For additional details on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Alberto Ruisanchez, Deputy Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 616–5594 (voice) or (800) 237–2515 (TTY); or Office of Special Counsel for Immigration-Related Unfair Employment Practices, Civil Rights Division, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 353–9338 (voice) or 1–800 237–2515 (TTY).

**SUPPLEMENTARY INFORMATION:** The Department of Justice (Department) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on August 15, 2016, proposing to revise its regulations implementing section 274B of the Immigration and Nationality Act (INA), concerning unfair immigration-related employment practices. 81 FR 53965(August 15, 2016). The NPRM proposed to conform the Department's regulations to the statutory text as amended, simplify and add definitions of statutory terms, update and clarify the procedures for filing and processing charges of discrimination, ensure effective investigations of unfair immigration-related employment practices, reflect developments in nondiscrimination jurisprudence, reflect changes in existing practices (*e.g.*, electronic filing of charges), reflect the new name of the office within the Department charged with enforcing this statute, and replace outdated references. The Department received several comments requesting that the 30-day public comment period be extended, including a request to extend the comment period by an additional 60 days. The requests indicated that more time was needed to provide meaningful, comprehensive responses to the NPRM.

Rather than granting the requested 60-day extension, the Department has decided to grant a 30-day extension of the comment period. Accordingly, the comment period will now close on

October 14, 2016. The Department believes that this additional 30 days will provide the public with a sufficient opportunity to provide comments on this NPRM. Given the importance of ensuring that its regulations conform to section 274B of the INA, the Department seeks to continue moving this rulemaking forward. Comments on the NPRM should be provided by October 14, 2016, via the methods described above.

Dated: September 7, 2016.

**Vanita Gupta,**

*Principal Deputy Assistant Attorney General.*

[FR Doc. 2016–21937 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–13–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R01–OAR–2016–0441; A–1–FRL–9952–10–Region I]**

### Air Plan Approval; VT; Prevention of Significant Deterioration, PM$_{2.5}$

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Vermont. The revision sets the amount of PM$_{2.5}$ increment sources are permitted to consume when obtaining a prevention of significant deterioration (PSD) preconstruction permit and requires PM$_{2.5}$ emission offsets under certain circumstances. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before October 14, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R01–OAR–2016–0441 at *http://www.regulations.gov,* or via email to *mcdonnell.ida@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Ida E. McDonnell, Manager, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, (OEP05–2), Boston, MA 02109–3912, phone number (617) 918–1653, fax number (617) 918–0653, email *McDonnell.Ida@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: August 8, 2016.

**H. Curtis Spalding,**

*Regional Administrator, EPA New England.*

[FR Doc. 2016–21880 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 97

**[FRL–9952–26–OAR]**

### Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2016 Control Periods

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability (NODA).

**SUMMARY:** The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary lists of units eligible for allocations of emission allowances under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the four CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after January 1, 2010 (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set-aside (NUSA) under the FIPs are calculated in an annual one- or two-round allocation process. EPA previously completed the first round of NUSA allowance allocations for the 2016 control periods for all four CSAPR trading programs and is now making available preliminary lists of units eligible for allocations in the second round of the NUSA allocation process for the CSAPR NO$_X$ Ozone Season Trading Program. EPA has posted a spreadsheet containing the preliminary lists on EPA's Web site. EPA will consider timely objections to the lists of eligible units contained in the spreadsheet and will promulgate a notice responding to any such objections no later than November 15, 2016, the deadline for recording the second-round allocations of CSAPR NO$_X$ Ozone Season allowances in sources' Allowance Management System accounts. This notice may concern CSAPR-affected units in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

**DATES:** Objections to the information referenced in this notice must be received on or before October 14, 2016.

**ADDRESSES:** Submit your objections via email to *CSAPR_NUSA@epa.gov.* Include "2016 NUSA allocations" in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning this action should be addressed to Robert Miller at (202) 343–9077 or *miller.robertl@epa.gov* or Kenon Smith at (202) 343–9164 or *smith.kenon@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Under the CSAPR FIPs, the mechanisms by which initial allocations of emission allowances are determined differ for "existing" and "new" units. For "existing" units—that is, units commencing commercial operation before January 1, 2010—the specific amounts of CSAPR FIP allowance allocations for all control periods have been established through rulemaking. EPA has announced the availability of spreadsheets showing the CSAPR FIP allowance allocations to existing units in previous notices.[1]

"New" units—that is, units commencing commercial operation on or after January 1, 2010—as well as certain older units that would not otherwise obtain FIP allowance allocations do not have pre-established allowance allocations. Instead, the CSAPR FIPs reserve a portion of each state's total annual emissions budget for each CSAPR emissions trading program as a new unit set-aside (NUSA)[2] and establish an annual process for allocating NUSA allowances to eligible units. States with Indian country within their borders have separate Indian country NUSAs. The annual process for allocating allowances from the NUSAs and Indian country NUSAs to eligible units is set forth in the CSAPR regulations at 40 CFR 97.411(b) and 97.412 ($NO_X$ Annual Trading Program), 97.511(b) and 97.512 ($NO_X$ Ozone Season Trading Program), 97.611(b) and 97.612 ($SO_2$ Group 1 Trading Program), and 97.711(b) and 97.712 ($SO_2$ Group 2 Trading Program). Each NUSA allowance allocation process involves up to two rounds of allocations to new units followed by the allocation to existing units of any allowances not allocated to new units. EPA provides public notice at certain points in the process.

EPA has already completed the first round of allocations of 2016 NUSA allowances for all four CSAPR trading programs, as announced in notices previously published in the **Federal Register**.[3] The first-round NUSA allocation process was discussed in those previous notices.

In the case of second-round allocations of NUSA allowances, the annual allocations for the CSAPR $NO_X$ Ozone Season Trading Program occur before the annual allocations for the other three CSAPR trading programs because of differences in the emissions reporting and compliance deadlines for the various programs. This notice concerns the second round of NUSA allowance allocations for the CSAPR NOx Ozone Season Trading Program for the 2016 control period.[4]

The units eligible to receive second-round NUSA allocations for the CSAPR $NO_X$ Ozone Season Trading Program are defined in §§ 97.511(a)(1)(iii) and 97.512(a)(9)(i). Generally, eligible units include any CSAPR-affected unit that commenced commercial operation between May 1 of the year before the control period in question and August 31 of the year of the control period in question. In the case of the 2016 control period, an eligible unit therefore must have commenced commercial operation between May 1, 2015 and August 31, 2016 (inclusive).

The total quantity of allowances to be allocated through the 2016 NUSA allowance allocation process for each state and emissions trading program—in the two rounds of the allocation process combined—is generally the state's 2016 emissions budget less the sum of (1) the total of the 2016 CSAPR FIP allowance allocations to existing units and (2) the amount of the 2016 Indian country NUSA, if any.[5] The amounts of CSAPR $NO_X$ Ozone Season NUSA allowances may be increased in certain circumstances as set forth in § 97.512(a)(2).

Second-round NUSA allocations for a given state, trading program, and control period are made only if the NUSA contains allowances after completion of the first-round allocations.

The amounts of second-round CSAPR $NO_X$ Ozone Season allowance allocations to eligible new units from each NUSA are calculated according to the procedures set forth in § 97.512(a)(9), (10) and (12). Generally, the procedures call for each eligible unit to receive a second-round 2016 NUSA allocation equal to the positive difference, if any, between its emissions during the 2016 $NO_X$ ozone season (*i.e.,* May 1, 2016 through September 30, 2016) as reported under 40 CFR part 75 and any first-round allocation the unit received, unless the total of such allocations to all eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis.

Any allowances remaining in the CSAPR $NO_X$ Ozone Season NUSA for a given state and control period after the second round of NUSA allocations to new units will be allocated to the existing units in the state according to the procedures set forth in § 97.512(a)(10) and (12).

EPA notes that an allocation or lack of allocation of allowances to a given EGU does not constitute a determination that CSAPR does or does not apply to the EGU. EPA also notes that allocations are subject to potential correction if a unit to which NUSA allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.[6]

The preliminary lists of units eligible for second-round 2016 NUSA allocations of CSAPR $NO_X$ Ozone Season allowances are set forth in an Excel spreadsheet titled "CSAPR_NUSA_2016_NOx_OS_2nd_Round_Prelim_Data" available on EPA's Web site at *http://www.epa.gov/crossstaterule/actions.html.* The spreadsheet contains a separate worksheet for each state covered by that program showing each unit preliminarily identified as eligible for a second-round NUSA allocation.

Each state worksheet also contains a summary showing (1) the quantity of allowances initially available in that state's 2016 NUSA, (2) the sum of the 2016 NUSA allowance allocations that were made in the first-round to new units in that state (if any), and (3) the quantity of allowances in the 2016 NUSA available for distribution in second-round allocations to new units (or ultimately for allocation to existing units).

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[1] The latest spreadsheet of CSAPR FIP allowance allocations to existing units, updated in 2014 to reflect changes to CSAPR's implementation schedule but with allocation amounts unchanged since June 2012, is available at *http://www.epa.gov/crossstaterule/actions.html. See* Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units, 79 FR 71674 (December 3, 2014).

[2] The NUSA amounts range from two percent to eight percent of the respective state budgets. The variation in percentages reflects differences among states in the quantities of emission allowances projected to be required by known new units at the time the budgets were set or amended.

[3] 81 FR 33636 (May 27, 2016); 81 FR 50630 (August 2, 2016).

[4] At this time, EPA is not aware of any unit eligible for a second-round allocation from any Indian country NUSA.

[5] The quantities of allowances to be allocated through the NUSA allowance allocation process may differ slightly from the NUSA amounts set forth in §§ 97.410(a), 97.510(a), 97.610(a), and 97.710(a) because of rounding in the spreadsheet of CSAPR FIP allowance allocations to existing units.

[6] *See* 40 CFR 97.511(c).

Objections should be strictly limited to whether EPA has correctly identified the new units eligible for second-round 2016 NUSA allocations of CSAPR $NO_X$ Ozone Season allowances according to the criteria described above and should be emailed to the address identified in **ADDRESSES.** Objections must include: (1) Precise identification of the specific data the commenter believes are inaccurate, (2) new proposed data upon which the commenter believes EPA should rely instead, and (3) the reasons why EPA should rely on the commenter's proposed data and not the data referenced in this notice.

**Authority:** 40 CFR 97.511(b).

Dated: September 7, 2016.

**Reid P. Harvey,**

*Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 2016–22090 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 131**

**[EPA–HQ–OW–2015–0392; FRL–9952–39–OW]**

**RIN 2040–AF61**

### Water Quality Standards; Establishment of Revised Numeric Criteria for Selenium for the San Francisco Bay and Delta, State of California; Extension of Public Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule, "Water Quality Standards; Establishment of Revised Numeric Criteria for Selenium for the San Francisco Bay and Delta, State of California." In response to stakeholder requests, EPA is extending the comment period for an additional 45 days, from September 13, 2016, to October 28, 2016.

**DATES:** The comment period for the proposed rule that published on July 15, 2016 (81 FR 46030) has been extended. Comments must be received on or before October 28, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0392, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Julianne McLaughlin, Office of Water, Standards and Health Protection Division (4305T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–2542; email address: *Mclaughlin.Julianne@epa.gov;* or Diane E. Fleck, P.E., Esq., Water Division (WTR–2–1), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105; telephone number (415) 972–3527; email address: *Fleck.Diane@EPA.gov.*

**SUPPLEMENTARY INFORMATION:** On July 15, 2016, EPA published the proposed rule, "Water Quality Standards; Establishment of Revised Numeric Criteria for Selenium for the San Francisco Bay and Delta, State of California" in the **Federal Register** (81 FR 46030). EPA proposes to revise the current federal Clean Water Act selenium water quality criteria applicable to the San Francisco Bay and Delta to ensure that the criteria are set at levels that protect aquatic life and aquatic-dependent wildlife, including federally listed threatened and endangered species.

The original deadline to submit comments on the proposed rule was September 13, 2016. This action extends the comment period for 45 days. Written comments must now be received on or before October 28, 2016.

For more information on this proposed rule, please visit *https://epa.gov/wqs-tech/water-quality-standards-establishment-revised-numeric-criteria-selenium-san-francisco-bay.*

Dated: September 7, 2016.

**Michael H. Shapiro,**

*Deputy Assistant Administrator, Office of Water.*

[FR Doc. 2016–22087 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Part 49**

**[FAR Case 2015–039; Docket No. 2015–0039, Sequence No. 1]**

**RIN 9000–AN26**

### Federal Acquisition Regulation: Audit of Settlement Proposals

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to raise the dollar threshold requirement for the audit of prime contract settlement proposals and subcontract settlements from $100,000 to $750,000.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before November 14, 2016 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR case 2015–039 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2015–039". Select the link "Comment Now" that corresponds with "FAR Case 2015–039." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2015–039" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), ATTN: Ms. Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR Case 2015–039, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathlyn Hopkins, Procurement Analyst, at 202–969–7226 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2015–039.

**SUPPLEMENTARY INFORMATION:**

## I. Background

DOD, GSA, and NASA are proposing to amend FAR 49.107 to increase the dollar threshold for the audit of prime contract settlement proposals and subcontract settlements, submitted in the event of contract termination. The threshold is increased from $100,000 to align with the threshold in FAR 15.403–4(a)(1) for obtaining certified cost or pricing data, which is currently $750,000. Other than the dollar amount, there will be no link between the requirements for certified cost or pricing data and the audit threshold for termination settlement proposals.

The proposed amendment will help alleviate contract close-out backlogs and enable contracting officers to more quickly deobligate excess funds from terminated contracts.

Under FAR 49.001, a "settlement proposal" is a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by FAR part 49. Termination clauses and other contract clauses authorize contracting officers to terminate contracts for convenience or for default, and to enter into settlement agreements.

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* because the rule raises the threshold for audit requirements, thus reducing burdens on all types of businesses. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and it is summarized as follows:

> Of all contracts awarded to small businesses in a typical year, the number terminated and subject to FAR part 49 procedures is less than one-fifth of one percent. Moreover, since the rule raises the audit threshold, even fewer small businesses will be subject to audits of their termination settlement proposals.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule consistent with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2015–039), in correspondence.

## IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Part 49

Government procurement.

Dated: September 9, 2016.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 49 as set forth below:

## PART 49—TERMINATION OF CONTRACTS

■ 1. The authority citation for 48 CFR part 49 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Amend section 16.505 by revising paragraphs (a) and (b) to read as follows:

### 49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) The TCO shall refer each prime contractor settlement proposal valued at or above the threshold for obtaining certified cost or pricing data set forth in FAR 15.403–4(a)(1) to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than the threshold for obtaining certified cost or pricing data to the audit agency. Referrals shall indicate any specific information or data that the TCO considers relevant and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals valued under the threshold for obtaining certified cost or pricing data is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when:

(1) The amount exceeds the threshold for obtaining certified cost or pricing data; or

(2) The TCO determines that a complete or partial accounting review is advisable. The audit agency shall submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

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[FR Doc. 2016–22070 Filed 9–13–16; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[4500030115]**

## Endangered and Threatened Wildlife and Plants; 90-Day Findings on 10 Petitions

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition findings and initiation of status reviews.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on 10 petitions to list, reclassify, or delist fish, wildlife, or plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that six petitions do not present substantial scientific or commercial information indicating that the petitioned actions may be warranted, and we are not initiating status reviews in response to these petitions. We refer to these as "not-substantial" petition findings. We also find that four petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a review of the status of these species to determine if the petitioned actions are warranted. To ensure that these status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status reviews, we will issue 12-month findings on the petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** When we conduct status reviews, we will consider all information that we have received. To ensure that we will have adequate time to consider submitted information during the status reviews, we request that we receive information no later than November 14, 2016. For information submitted electronically using the Federal eRulemaking Portal (see ADDRESSES, below), this would mean submitting the information electronically by 11:59 p.m. Eastern Time on that date.

**ADDRESSES:** *Not-substantial petition findings:* The not-substantial petition findings announced in this document are available on *http://www.regulations.gov* under the appropriate docket number (see Table 2, below), or on the Service's Web site at *http://ecos.fws.gov.* Supporting information in preparing these findings is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. If you have new information concerning the status of, or threats to, any of these species or their habitats, please submit that information to the person listed under **FOR FURTHER INFORMATION CONTACT.**

*Status reviews:* You may submit information on species for which a status review is being initiated by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see Table 1, below). You may submit information by clicking on "Comment Now!" If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Insert appropriate docket number; see Table 1, below]; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information for Status Reviews, below, for more details).

TABLE 1—LIST OF "SUBSTANTIAL" FINDINGS FOR WHICH A STATUS REVIEW IS BEING INITIATED

| Common name | Docket No. | URL to Docket in *Regulations.gov* |
|---|---|---|
| Florida scrub lizard | FWS–R4–ES–2015–0087 | *https://www.regulations.gov/docket?D=FWS-R4-ES-2015-0087.* |
| Joshua tree | FWS–R8–ES–2016–0088 | *https://www.regulations.gov/docket?D=FWS-R8-ES-2016-0088.* |
| Lassics lupine | FWS–R8–ES–2016–0089 | *https://www.regulations.gov/docket?D=FWS-R8-ES-2016-0089.* |
| Lesser Virgin Islands skink | FWS–R4–ES–2015–0098 | *https://www.regulations.gov/docket?D=FWS-R4-ES-2015-0098.* |

TABLE 2—LIST OF "NOT SUBSTANTIAL" FINDINGS

| Common name | Docket No. | URL to Docket in *Regulations.gov* |
|---|---|---|
| Fourche Mountain salamander | FWS–R4–ES–2016–0096 | *https://www.regulations.gov/docket?D=FWS-R4-ES-2016-0096.* |
| American Pika | FWS–R6–ES–2016–0091 | *https://www.regulations.gov/docket?D=FWS-R6-ES-2016-0091.* |
| Ricord's rock iguana | FWS–HQ–ES–2016–0092 | *https://www.regulations.gov/docket?D=FWS-HQ-ES-2016-0092.* |
| Spectacled eider (delist) | FWS–R7–ES–2016–0041 | *https://www.regulations.gov/docket?D=FWS-R7-ES-2016-0041.* |
| Steller's eider (Alaska population) (delist). | FWS–R7–ES–2016–0093 | *https://www.regulations.gov/docket?D=FWS-R7-ES-2016-0093.* |
| Wyoming pocket gopher | FWS–R6–ES–2016–0094 | *https://www.regulations.gov/docket?D=FWS-R6-ES-2016-0094.* |

**FOR FURTHER INFORMATION CONTACT:**

| Common name | Contact person |
|---|---|
| Florida scrub lizard | Andreas Moshogianis, 404–679–7119; *Andreas_Moshogianis@fws.gov.* |
| Fourche Mountain salamander | Melvin Tobin, 501–513–4473; *Melvin_Tobin@fws.gov.* |
| Joshua tree | Mendel Stewart, 760–431–9440; *Mendel_Stewart@fws.gov.* |

| Common name | Contact person |
|---|---|
| Lassics lupine | Bruce Bingham, 707–822–7201; *Bruce_Bingham@fws.gov.* |
| Lesser Virgin Islands skink | Andreas Moshogianis, 404–679–7119; *Andreas_Moshogianis@fws.gov.* |
| American Pika | Justin Shoemaker, 309–757–5800; *Justin_Shoemaker@fws.gov.* |
| Ricords rock iguana | Emily Weller, 703–358–2171; *Emily_Weller@fws.gov.* |
| Spectacled eider | Drew Crane, 907–786–3323; *Drew_Crane@fws.gov.* |
| Steller's eider (Alaska population) | Drew Crane, 907–786–3323; *Drew_Crane@fws.gov.* |
| Wyoming pocket gopher | Justin Shoemaker, 309–757–5800; *Justin_Shoemaker@fws.gov.* |

If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Request for Information for Status Reviews

When we make a finding that a petition presents substantial information indicating that listing, reclassifying, or delisting a species may be warranted, we are required to review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on these species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns; and

(d) Historical and current population levels, and current and projected trends.

(2) The five factors that are the basis for making a listing, reclassifying, or delisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), including past and ongoing conservation measures that could decrease the extent to which one or more of the factors affect the species, its habitat, or both. The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

(3) The potential effects of climate change on the species and its habitat, and the extent to which it affects the habitat or range of the species.

If, after the status review, we determine that listing is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) for domestic (U.S.) species under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information for the species listed above in Table 1 (to be submitted as provided for in **ADDRESSES**) on:

(1) What may constitute "physical or biological features essential to the conservation of the species," within the geographical range occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are "essential for the conservation of the species"; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat falls within the definition of "critical habitat" at section 3(5) of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your information concerning these status reviews by one of the methods listed in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

## Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our regulations in the Code of Federal Regulations (CFR) establish that the standard for substantial scientific or commercial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that a petition presents substantial scientific or commercial information, we are required to promptly commence a review of the status of the species, and we will subsequently summarize the status review in our 12-month finding.

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. Under Sections 4(a), 3(6), and 3(20), a species qualifies as an "endangered species" if it is in danger of extinction throughout all or a significant portion of its range because of one or more of the five factors described in section 4(a)(1) of the Act (see Request for Information for Status Reviews, above); a species qualifies as a "threatened species" if it is likely to become an "endangered species" within the foreseeable future throughout all or a significant portion of its range because of one or more of those five factors.

In considering whether conditions described within one or more of the factors might constitute threats to a particular species, we must look beyond the exposure of the species to those conditions to evaluate whether the species may respond to the conditions in a way that causes actual impacts to the species. If there is exposure to a condition and the species responds negatively, the condition qualifies as a stressor and, during the subsequent status review, we attempt to determine how significant the stressor is. If the stressor is sufficiently significant that it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act, the stressor constitutes a threat to the species. Thus, the identification of conditions that could affect a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these conditions may be operative threats that act on the species to a sufficient degree that the species may meet the definition of an endangered or threatened species under the Act.

## Evaluation of a Petition To List the Florida Scrub Lizard as an Endangered or Threatened Species Under the Act

### *Species and Range*

Florida scrub lizard (*Sceloporus woodi*): Florida.

### *Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from the Center for Biological Diversity, requesting that 53 species of reptiles and amphibians, including the Florida scrub lizard, be listed under the Act as endangered or threatened species and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

### *Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Florida scrub lizard (*Sceloporus woodi*) may be warranted, based on Factors A and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either "endangered species" under section 3(6) of the Act or "threatened species" under section 3(20) of the Act, including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0087 under the Supporting Documents section.

## Evaluation of a Petition To List the Fourche Mountain Salamander as an Endangered or Threatened Species Under the Act

### *Species and Range*

Fourche Mountain salamander (*Plethodon fourchensis*): Arizona.

### *Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from the Center for Biological Diversity requesting that 53 species of reptiles and amphibians, including the Fourche Mountain salamander, be listed under the Act as endangered or threatened species and critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

### *Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Fourche Mountain salamander (*Plethodon fourchensis*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0096 under the Supporting Documents section. Because the petition does not present substantial information indicating that listing the Fourche Mountain salamander may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0096 under the Supporting Documents section.

## Evaluation of a Petition To List the Joshua Tree as an Endangered or Threatened Species Under the Act

### *Species and Range*

Joshua tree (*Yucca brevifolia*): Arizona, California, Nevada, and Utah.

### *Petition History*

On September 29, 2015, we received a petition dated September 28, 2015, from Taylor Jones (representing Wild Earth Guardians), requesting that *Yucca brevifolia* (Joshua tree)—either as a full species (*Yucca brevifolia*) or as two infraspecific taxa—be listed as threatened and, if applicable, critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). On December 8, 2015, in a letter to the petitioner, we responded that we reviewed the information presented in the petition and did not find that an emergency listing under Section 4(b)(7) of the Act was necessary. This finding addresses the petition.

### *Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Joshua tree (*Yucca brevifolia*) may be warranted, based on Factors A and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either "endangered species" under section 3(6) of the Act or "threatened species" under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0088 under the Supporting Documents section.

### Evaluation of a Petition To List Lassics Lupine as an Endangered or Threatened Species Under the Act

*Species and Range*

Lassics lupine (*Lupinus constancei*): California.

*Petition History*

On January 15, 2016, we received a petition, dated January 15, 2016, from David Imper, Sydney Carothers, the Center for Biological Diversity, and the California Native Plant Society, requesting that Lassics lupine (*Lupinus constancei*) be emergency listed as endangered and critical habitat designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition. On March 29, 2016, we sent the petitioners a letter notifying them of receipt of the petition. Because the Act does not provide for petitions to emergency list, we treat petitions to emergency list as regular petitions to list under the Act. However, in evaluating petitions to list, we consider whether emergency listing under Section 4(b)(7) of the Act is necessary. As a result, our letter notifying petitioners of receipt of the petition also informed them that we did not find that emergency listing was necessary.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Lassics lupine (*Lupinus constancei*) may be warranted, based on Factors A, C, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either "endangered species" under section 3(6) of the Act or "threatened species" under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R8–ES–2016–0089 under the Supporting Documents section.

### Evaluation of a Petition To List the Lesser Virgin Islands Skink as an Endangered or Threatened Species Under the Act

*Species and Range*

Lesser Virgin Islands skink (*Spondylurus semitaeniatus*): Virgin Islands.

*Petition History*

On February 11, 2014, we received a petition dated February 11, 2014, from the Center for Biological Diversity, requesting that the Culebra skink, Mona skink, Monito skink, lesser Virgin Islands skink, Virgin Islands bronze skink, Puerto Rican skink, greater Saint Croix skink, greater Virgin Islands skink, and lesser Saint Croix skink be listed as endangered and critical habitat be designated for these species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). We acknowledged receipt of this petition via email (from Doug Krofta to Collette Adkins Giese) on February 12, 2014. This finding addresses the lesser Virgin Islands skink. The Culebra skink, greater Saint Croix skink, Mona skink, Puerto Rican skink, Virgin Islands bronze skink, greater Virgin Islands skink, and lesser Saint Croix skink were addressed in a separate evaluation, which published in the **Federal Register** on January 12, 2016 (81 FR 1368). The Monito skink was addressed in a separate evaluation which published in the **Federal Register** on March 16, 2016 (81 FR 14058).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the lesser Virgin Islands skink (*Spondylurus semitaeniatus*) may be warranted, based on Factors C and D. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either "endangered species" under section 3(6) of the Act or "threatened species" under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0098 under the Supporting Documents section.

### Evaluation of a Petition To List the American Pika as an Endangered or Threatened Species Under the Act

*Species and Range*

Pika, American (*Ochotona princeps*): Colorado, Idaho, Montana, Nevada, Utah, Wyoming, Canada (British Columbia and Alberta).

*Petition History*

On April 21, 2016, we received a petition dated April 14, 2016, from Mr. Timothy Eng, requesting that the American pika (*Ochotona princeps*) be listed as endangered or threatened and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the American pika (*Ochotona princeps*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0091 under the Supporting Documents section. Because the petition does not present substantial information indicating that listing the American pika may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, the American pika or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0091 under the Supporting Documents section.

### Evaluation of a Petition To List Ricord's Rock Iguana as an Endangered or Threatened Species Under the Act

*Species and Range*

Ricord's rock iguana (*Cyclura ricordii*): Dominican Republic, Haiti.

*Petition History*

On March 17, 2016, we received a petition dated March 14, 2016, from Grupo Jaragua, International Iguana Foundation, International Reptile Conservation Foundation, and the Zoological Society of San Diego, requesting that Ricord's rock iguana (*Cyclura ricordii*) be listed as endangered or threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Ricord's rock iguana (*Cyclura ricordii*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0092 under the Supporting Documents section. Because the petition does not present substantial information indicating that listing the Ricord's rock iguana may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0092 under the Supporting Documents section.

### Evaluation of a Petition To Delist the Spectacled Eider Under the Act

*Species and Range*

Spectacled eider (*Somateria fischeri*): Alaska.

*Petition History*

On March 30, 2016, we received a petition dated January 29, 2016, from Tim Langer, Ph.D., requesting that the spectacled eider and Alaska-breeding Steller's eider be delisted due to error in information under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the spectacled eider (*Somateria fischeri*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0041 under the Supporting Documents section. Because the petition does not present substantial information indicating that delisting the spectacled eider may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0041 under the Supporting Documents section.

### Evaluation of a Petition To Delist the Steller's Eider Under the Act

*Species and Range*

Steller's eider (*Polysticta stelleri*) (Alaska Population): Alaska.

*Petition History*

On March 30, 2016, we received a petition dated January 29, 2016, from Tim Langer, Ph.D., requesting that the spectacled eider and Alaska-breeding Steller's eider be delisted due to error in information under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Alaska-breeding Steller's eider (*Polysticta stelleri*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0093 under the Supporting Documents section. Because the petition does not present substantial information indicating that delisting the Steller's eider may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R7–ES–2016–0093 under the Supporting Documents section.

### Evaluation of a Petition To List the Wyoming Pocket Gopher as an Endangered or Threatened Species Under the Act

*Species and Range*

Wyoming pocket gopher (*Thomomys clusius*): Colorado and Wyoming.

*Petition History*

On April 15, 2016, we received a petition dated April 6, 2016, from WildEarth Guardians, requesting that Wyoming pocket gopher be listed as endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition, and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Wyoming pocket gopher (*Thomomys clusius*). The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0094 under the Supporting Documents section. Because the petition does not present substantial information indicating that listing the Wyoming pocket gopher may be warranted, we are not initiating a status review of this species in response to this petition. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, the Wyoming pocket gopher or its habitat at any time (see **FOR FURTHER INFORMATION CONTACT**).

Additional information regarding our review of the petition, can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0094 under the Supporting Documents section.

## Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the Fourche Mountain salamander, American pika, Ricord's rock iguana, spectacled eider, Alaska-breeding Steller's eider, and the Wyoming pocket gopher do not present substantial scientific or commercial information indicating that the requested actions may be warranted. Therefore, we are not initiating status reviews for these species.

We have determined that the petitions summarized above for the Florida scrub lizard, Joshua tree, Lassics lupine, and lesser Virgin Islands skink present substantial scientific or commercial information indicating that the requested actions may be warranted. Because we have found that these petitions present substantial information indicating that the petitioned actions may be warranted, we are initiating status reviews to determine whether these actions under the Act are warranted. At the conclusion of each status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service finds that the petitioned action is warranted.

It is important to note that the standard for a 90-day finding differs from the Act's standard that applies to a status review to determine whether a petitioned action is warranted. In making a 90-day finding, we consider only the information in the petition and sources cited in the petition, and we evaluate merely whether that information constitutes "substantial information" indicating that the petitioned action "may be warranted." In a 12-month finding, we must complete a thorough status review of the species and evaluate the "best scientific and commercial data available" to determine whether a petitioned action "is warranted." Because the Act's standards for 90-day and 12-month findings are different, a "substantial" 90-day finding does not mean that the 12-month finding will result in a "warranted" finding.

## References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the appropriate lead field offices (contact the person listed under **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

**Authority:** The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 1, 2016.

**James W. Kurth,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–22071 Filed 9–13–16; 8:45 am]

BILLING CODE 4333–15–P

# Notices

Federal Register

Vol. 81, No. 178

Wednesday, September 14, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Fremont and Winema Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fremont and Winema Resource Advisory Committee (RAC) will meet in Lakeview, Oregon. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act. RAC information can be found at the following Web site: *http://facadatabase.gov/committee/committee.aspx?cid=2266&aid=171.*

**DATES:** The meeting will be held on September 29, 2016, from 9 a.m. to 5 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** The meeting will be held at the Lakeview Interagency Building, Main Conference Rooms, 1301 South G Street, Lakeview, Oregon.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Lakeview Interagency Building, 1301 South G Street, Lakeview, Oregon. Please call ahead at 541–947–6328 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** David Brillenz, Designated Federal Official by phone at 541–947–6328, or by email at *davidbbrillenz@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Introduce new Fremont and Winema RAC members,
2. Provide ethics training, and
3. Provide recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 15, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Roland Giller, Partnership Coordinator, 38500 Highway 97 North, Chiloquin, Oregon 97624; or by email to *rgiller@fs.fed.us,* or via facsimile to 541–783–2134.

*Meeting Accommodations:* If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: September 7, 2016.

**Eric Watrud,**

*Acting Fremont-Winema N.F. Supervisor.*

[FR Doc. 2016–22065 Filed 9–13–16; 8:45 am]

BILLING CODE 3411–15–P

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## DEPARTMENT OF COMMERCE

**[Docket Number 160907825–6825–01]**

### Request for Comments for the Commission on Evidence-Based Policymaking

**AGENCY:** Commission on Evidence-Based Policymaking, Department of Commerce.

**ACTION:** Request for comments.

**SUMMARY:** The Evidence-Based Policymaking Commission Act of 2016 (Pub. L. 114–140), enacted March 30, 2016, established a 15-member Commission on Evidence-Based Policymaking. The Commission is charged with examining strategies to increase the availability and use of government data, in order to build evidence related to government programs and policies, while protecting the privacy and confidentiality of the data. Over the next year, the Commission will consider how data, research, and evaluation are currently used to build evidence and continuously improve public programs and policies, and how to strengthen evidence-building to inform program and policy design and implementation. The Commission's work will conclude with a presentation of findings and recommendations on evidence-building to Congress and the President. This request for comments seeks public input on a range of issues, including topics the authorizing law directs the Commission to consider. The public comments received from this request will be used to inform future deliberations of the Commission.

**DATES:** Comments must be received by November 14, 2016.

**ADDRESSES:** Submit comments through the Federal eRulemaking Portal. We will not accept comments by fax or paper delivery. Please include the Docket ID and the phrase "Commission on Evidence-Based Policymaking Comments" at the beginning of your comments. Please also indicate which questions described in the **SUPPLEMENTARY INFORMATION** of this notice are addressed in your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically under Docket ID USBC–2016–0003. Information on using *Regulations.gov,* including instructions for accessing Commission documents, submitting comments, and viewing the docket, is available on the site under "How to Use This Site."

- *Privacy Note:* Comments submitted in response to this notice may be made available to the public through relevant Web sites. Therefore, commenters should only include in their comments information that they wish to make publicly available on the Internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public, notwithstanding the inclusion of the routine notice.

**FOR FURTHER INFORMATION CONTACT:** Nick Hart, Policy and Research Director for the Commission on Evidence-Based Policymaking, *nicholas.r.hart@census.gov.*

**SUPPLEMENTARY INFORMATION:**

## Purpose

The Commission on Evidence-Based Policymaking (hereafter, "Commission") established by Public Law 114–140 is charged with examining strategies to improve the production and use of evidence to support U.S. government programs and policies. Specifically, the Commission is considering how to increase the availability and use of government data in support of evidence-building activities related to government programs and policies, while protecting the privacy and confidentiality of such data.

This request for comments offers government entities, researchers, evaluators, contractors, and other interested parties the opportunity to inform the Commission's work and provide recommendations on core questions the Commission will consider.

## Request for Comments

Through this request for comments, the Commission is seeking initial feedback from a broad range of stakeholders on questions that will contribute to the Commission's future activities and fulfillment of its duties, potentially including any findings and recommendations. This request for comments is for information-gathering and fact-finding purposes only, and should not be construed as a solicitation or as an obligation on the part of the Commission or Federal agencies to agree with submitted comments or to make recommendations regarding specific issues identified in public comments.

The Commission requests that respondents address the following questions, where possible and applicable. Respondents are encouraged to focus on questions informed by relevant expertise or perspectives. Please clearly indicate which question(s) you address in your response and any evidence to support assertions, where practicable.

## Overarching Questions

1. Are there successful frameworks, policies, practices, and methods to overcome challenges related to evidence-building from state, local, and/or international governments the Commission should consider when developing findings and recommendations regarding Federal evidence-based policymaking? If so, please describe.

2. Based on identified best practices and existing examples, what factors should be considered in reasonably ensuring the security and privacy of administrative and survey data?

## Data Infrastructure and Access

3. Based on identified best practices and existing examples, how should existing government data infrastructure be modified to best facilitate use of and access to administrative and survey data?

4. What data-sharing infrastructure should be used to facilitate data merging, linking, and access for research, evaluation, and analysis purposes?

5. What challenges currently exist in linking state and local data to federal data? Are there successful instances where these challenges have been addressed?

6. Should a single or multiple clearinghouse(s) for administrative and survey data be established to improve evidence-based policymaking? What benefits or limitations are likely to be encountered in either approach?

7. What data should be included in a potential U.S. government data clearinghouse(s)? What are the current legal or administrative barriers to including such data in a clearinghouse or linking the data?

8. What factors or strategies should the Commission consider for how a clearinghouse(s) could be self-funded? What successful examples exist for self-financing related to similar purposes?

9. What specific administrative or legal barriers currently exist for *accessing* survey and administrative data?

10. How should the Commission define "qualified researchers and institutions?" To what extent should administrative and survey data held by government agencies be made available to "qualified researchers and institutions?"

11. How might integration of administrative and survey data in a clearinghouse affect the risk of unintentional or unauthorized access or release of personally-identifiable information, confidential business information, or other identifiable records? How can identifiable information be best protected to ensure the privacy and confidentiality of individual or business data in a clearinghouse?

12. If a clearinghouse were created, what types of restrictions should be placed on the uses of data in the clearinghouse by "qualified researchers and institutions?"

13. What technological solutions from government or the private sector are relevant for facilitating data sharing and management?

14. What incentives may best facilitate interagency sharing of information to improve programmatic effectiveness and enhance data accuracy and comprehensiveness?

## Data Use in Program Design, Management, Research, Evaluation, and Analysis

15. What barriers currently exist for *using* survey and administrative data to support program management and/or evaluation activities?

16. How can data, statistics, results of research, and findings from evaluation, be best used to improve policies and programs?

17. To what extent can or should program and policy evaluation be addressed in program designs?

18. How can or should program evaluation be incorporated into program designs? What specific examples demonstrate where evaluation has been successfully incorporated in program designs?

19. To what extent should evaluations specifically with either experimental (sometimes referred to as "randomized control trials") or quasi-experimental designs be institutionalized in programs? What specific examples demonstrate where such institutionalization has been successful and what best practices exist for doing so?

## Guidance for Submitting Documents

We ask that each respondent include the name and address of his or her institution or affiliation, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or affiliation, if any.

### Rights to Materials Submitted

By submitting material in response to this request, you agree to grant the Commission a worldwide, royalty-free, perpetual, irrevocable, nonexclusive license to use the material, and to post it. Further, you agree that you own, have a valid license, or are otherwise authorized to provide the material to the Commission. The Commission will not provide any compensation for material submitted in response to this request for comments.

Dated: September 8, 2016.

**Shelly Martinez,**

*Executive Director of the Commission on Evidence-Based Policymaking.*

[FR Doc. 2016–22002 Filed 9–13–16; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Iowa State University of Science and Technology, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 3720, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Docket Number:* 15–052. Applicant: Iowa State University of Science and Technology, Ames, IA 50011–3020. Instrument: Electron Microscope. Manufacturer: FEI, Company, Czech Republic and Great Britain. Intended Use: See notice at 81 FR 41519, June 27, 2016.

*Docket Number:* 16–007. Applicant: University of California, Riverside, Riverside, CA 92521. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 81 FR 41519, June 27, 2016.

*Comments:* None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated: September 8, 2016.

**Gregory W. Campbell,**

*Director, Subsidies Enforcement Office, Enforcement and Compliance.*

[FR Doc. 2016–22099 Filed 9–13–16; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–580–888]**

### Certain Carbon and Alloy Steel Cut-to-Length Plate From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are not being provided to producers/exporters of certain carbon and alloy steel cut-to-length plate (CTL plate) from the Republic of Korea (Korea). The period of investigation is January 1, 2015, through December 31, 2015. Interested parties are invited to comment on this preliminary determination.

**DATES:** Effective September 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Yasmin Bordas or John Corrigan, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3813 or (202) 482–7438, respectively.

**SUPPLEMENTARY INFORMATION:**

### Alignment of Final Countervailing Duty (CVD) Determination With Final Antidumping Duty (AD) Determination

On the same day the Department initiated this CVD investigation, the Department also initiated CVD investigations of CTL plate from Brazil and the People's Republic of China (PRC) and AD investigations of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, Korea, the PRC, South Africa, Taiwan, and Turkey.[1] The CVD investigation covers the same merchandise as the AD investigations of CTL plate from Austria, Belgium, Brazil, France, Germany, Italy, Japan, South Africa, and Taiwan.[2] On August 25, 2016, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (Act), Petitioners[3] requested alignment of the final CVD determination with the final AD determination of CTL plate from Korea.[4] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination of CTL plate from Austria, Belgium, France, Germany, Italy, Japan, and Taiwan. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than January 18, 2017, unless postponed.[5]

### Scope of the Investigation

The scope of this investigation covers CTL plate from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

### Scope Comments

In accordance with the *Preamble* to the Department's regulations,[6] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[7] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice,* as well as additional language proposed by the Department. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Department's Preliminary Scope Memorandum issued concurrently with this notice.[8] The Department is preliminarily modifying the scope language as it appeared in the *Initiation Notice* to clarify the exclusion for stainless steel plate.[9] The Department is also correcting two tariff numbers that were misidentified in the Petitions and in the *Initiation Notice.*[10]

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[1] *See Certain Carbon and Alloy Steel Cut-to-Length Plate From Brazil, the People's Republic of China, and the Republic of Korea: Initiation of Countervailing Duty Investigations,* 81 FR 27098 (May 5, 2016) (*Initiation Notice*); *see also Certain Carbon and Alloy Steel Cut-To-Length Plate From Austria, Belgium, Brazil, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 27089 (May 5, 2016).

[2] For a complete case history, *see* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Decision Memorandum for the Preliminary Negative Determination: Countervailing Duty Investigation of Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea," dated concurrently with this notice and hereby incorporated by reference, and adopted by this notice (Preliminary Decision Memorandum).

[3] Petitioners in this investigation are ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises LLC.

[4] *See* Letter from Petitioners, "Carbon and Alloy Steel Cut-to-Length Plate from Korea: Petitioners' Request to Align the Countervailing Duty Final Determinations with the Companion Antidumping Duty Final Determinations," dated August 25, 2016.

[5] The AD determinations of CTL plate from Brazil, South Africa, and Turkey were not postponed. *See Certain Carbon and Alloy Steel Cut-to-Length Plate Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the People's Republic of China, and Taiwan: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 81 FR 59185 (August 29, 2016).

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

## Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[11] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and is available to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

## Preliminary Determination

For this preliminary determination, we calculated a *de minimis* countervailable subsidy rate for POSCO. Consistent with section 703(b)(4)(A) of the Act, we are disregarding this rate and preliminarily determine that countervailable subsides are not being provided to producers/exporters of the subject merchandise in Korea. Accordingly, we did not calculate an all-others rate because the rate for the individually investigated company is *de minimis.*

We preliminarily determine the countervailable subsidy rate to be:

| Company | Subsidy rate |
|---|---|
| POSCO .................... | 0.62 percent (*de minimis*) |

Because we preliminarily determine that the CVD rates in this investigation are *de minimis,* we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise.

## Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondent prior to making our final determination.

## International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

## Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[12] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[13] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: September 6, 2016.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

## Appendix I

### Scope of the Investigation

The products covered by this investigation are certain carbon and alloy steel hot-rolled or forged flat plate products not in coils, whether or not painted, varnished, or coated with plastics or other non-metallic substances (cut-to-length plate). Subject merchandise includes plate that is produced by being cut-to-length from coils or from other discrete length plate and plate that is rolled or forged into a discrete length. The products covered include (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a thickness of not less than 4 mm, which are not in coils and without patterns in relief), and (2) hot-rolled or forged flat steel products of a thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are not in coils, whether or not with patterns in relief. The covered products described above may be rectangular, square, circular or other shapes and include products of either rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process, *i.e.,* products which have been "worked after rolling", (*e.g.,* products which have been beveled or rounded at the edges).

For purposes of the width and thickness requirements referenced above, the following rules apply:

(1) Except where otherwise stated where the nominal and actual thickness or width measurements vary, a product from a given subject country is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the product is already covered by an order existing on that specific country (*e.g.,* orders on hot-rolled flat-rolled steel); and

(2) where the width and thickness vary for a specific product (*e.g.,* the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) Iron predominates, by weight, over each of the other contained elements; and (2) the carbon content is 2 percent or less by weight.

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[7] *See Initiation Notice,* 81 FR at 27099.

[8] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Certain Carbon and Alloy Steel Cut-to-Length Plate From Austria, Belgium, Brazil, the People's Republic of China, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, the Republic of South Africa, Taiwan, and Turkey: Scope Comments Decision Memorandum for the Preliminary Determinations" (Preliminary Scope Memorandum) dated concurrently with this preliminary determination.

[9] Specifically, the revised scope now states that stainless steel plate must not contain more than 1.2 percent of carbon by weight.

[10] *Id.*

[11] *See* (Preliminary Decision Memorandum).

[12] *See* 19 CFR 351.224(b).

[13] *See* 19 CFR 351.309(c)–(d) and 19 CFR 351.310(c).

Subject merchandise includes cut-to-length plate that has been further processed in the subject country or a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, beveling, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the cut-to-length plate.

All products that meet the written physical description, are within the scope of this investigation unless specifically excluded or covered by the scope of an existing order. The following products are outside of, and/or specifically excluded from, the scope of this investigation:

(1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances;

(2) military grade armor plate certified to one of the following specifications or to a specification that references and incorporates one of the following specifications:

- MIL–A–12560,
- MIL–DTL–12560H,
- MIL–DTL–12560J,
- MIL–DTL–12560K,
- MIL–DTL–32332,
- MIL–A–46100D,
- MIL–DTL–46100–E,
- MIL–46177C,
- MIL–S–16216K Grade HY80,
- MIL–S–16216K Grade HY100,
- MIL–S–24645A HSLA–80;
- MIL–S–24645A HSLA–100,
- T9074–BD–GIB–010/0300 Grade HY80,
- T9074–BD–GIB–010/0300 Grade HY100,
- T9074–BD–GIB–010/0300 Grade HSLA80,
- T9074–BD–GIB–010/0300 Grade HSLA100, and
- T9074–BD–GIB–010/0300 Mod. Grade HSLA115,

except that any cut-to-length plate certified to one of the above specifications, or to a military grade armor specification that references and incorporates one of the above specifications, will not be excluded from the scope if it is also dual- or multiple-certified to any other non-armor specification that otherwise would fall within the scope of this order;

(3) stainless steel plate, containing 10.5 percent or more of chromium by weight and not more than 1.2 percent of carbon by weight;

(4) CTL plate meeting the requirements of ASTM A–829, Grade E 4340 that are over 305 mm in actual thickness;

(5) Alloy forged and rolled CTL plate greater than or equal to 152.4 mm in actual thickness meeting each of the following requirements:

(a) Electric furnace melted, ladle refined & vacuum degassed and having a chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.20,
- Manganese 1.20–1.60,
- Nickel not greater than 1.0,
- Sulfur not greater than 0.007,
- Phosphorus not greater than 0.020,
- Chromium 1.0–2.5,
- Molybdenum 0.35–0.80,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) With a Brinell hardness measured in all parts of the product including mid thickness falling within one of the following ranges:

(i) 270–300 HBW,

(ii) 290–320 HBW, or

(iii) 320–350HBW;

(c) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.0, C not exceeding 0.5, D not exceeding 1.5; and

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 2 mm flat bottom hole;

(6) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, Ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.23–0.28,
- Silicon 0.05–0.15,
- Manganese 1.20–1.50,
- Nickel not greater than 0.4,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.20–1.50,
- Molybdenum 0.35–0.55,
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm;

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.5, B not exceeding 1.5, C not exceeding 1.0, D not exceeding 1.5;

(c) Having the following mechanical properties:

(i) With a Brinell hardness not more than 237 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 75ksi min and UTS 95ksi or more, Elongation of 18% or more and Reduction of area 35% or more; having charpy V at −75 degrees F in the longitudinal direction equal or greater than 15 ft. lbs (single value) and equal or greater than 20 ft. lbs (average of 3 specimens) and conforming to the requirements of NACE MR01–75; or

(ii) With a Brinell hardness not less than 240 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 90 ksi min and UTS 110 ksi or more, Elongation of 15% or more and Reduction of area 30% or more; having charpy V at −40 degrees F in the longitudinal direction equal or greater than 21 ft. lbs (single value) and equal or greater than 31 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301;

(7) Alloy forged and rolled steel CTL plate over 407 mm in actual thickness and meeting the following requirements:

(a) Made from Electric Arc Furnace melted, ladle refined & vacuum degassed, alloy steel with the following chemical composition (expressed in weight percentages):

- Carbon 0.25–0.30,
- Silicon not greater than 0.25,
- Manganese not greater than 0.50,
- Nickel 3.0–3.5,
- Sulfur not greater than 0.010,
- Phosphorus not greater than 0.020,
- Chromium 1.0–1.5,
- Molybdenum 0.6–0.9,
- Vanadium 0.08 to 0.12
- Boron 0.002–0.004,
- Oxygen not greater than 20 ppm,
- Hydrogen not greater than 2 ppm, and
- Nitrogen not greater than 60 ppm.

(b) Having cleanliness in accordance with ASTM E45 method A (Thin and Heavy): A not exceeding 1.0(t) and 0.5(h), B not exceeding 1.5(t) and 1.0(h), C not exceeding 1.0(t) and 0.5(h), and D not exceeding 1.5(t) and 1.0(h);

(c) Having the following mechanical properties: A Brinell hardness not less than 350 HBW measured in all parts of the product including mid thickness; and having a Yield Strength of 145ksi or more and UTS 160ksi or more, Elongation of 15% or more and Reduction of area 35% or more; having charpy V at −40 degrees F in the transverse direction equal or greater than 20 ft. lbs (single value) and equal or greater than 25 ft. lbs (average of 3 specimens);

(d) Conforming to ASTM A578–S9 ultrasonic testing requirements with acceptance criteria 3.2 mm flat bottom hole; and

(e) Conforming to magnetic particle inspection in accordance with AMS 2301.

At the time of the filing of the petition, there was an existing countervailing duty order on certain cut-to-length carbon-quality steel plate from Korea. *See Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73,176 (Dep't Commerce Dec. 29, 1999), as amended, 65 FR 6,587 (Dep't Commerce Feb. 10, 2000) (1999 Korea CVD Order). The scope of the countervailing duty investigation with regard to cut-to-length plate from Korea covers only (1) subject cut-to-length plate not within the physical description of cut-to-length carbon quality steel plate in the 1999 Korea CVD Order regardless of producer or exporter, and (2) cut-to-length plate produced and/or exported by those companies that were excluded or revoked from the 1999 Korea CVD Order as of April 8, 2016. The only revoked or excluded company is Pohang Iron and Steel Company, also known as POSCO.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7225.40.1110, 7225.40.1180, 7225.40.3005, 7225.40.3050, 7226.20.0000, and 7226.91.5000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7208.40.6060, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.19.1500, 7211.19.2000, 7211.19.4500, 7211.19.6000, 7211.19.7590, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.10.0000, 7214.30.0010, 7214.30.0080, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7225.11.0000, 7225.19.0000, 7225.40.5110, 7225.40.5130, 7225.40.5160, 7225.40.7000, 7225.99.0010, 7225.99.0090, 7226.11.1000, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.0500, 7226.91.1530, 7226.91.1560, 7226.91.2530, 7226.91.2560, 7226.91.7000, 7226.91.8000, and 7226.99.0180.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
IV. Scope of the Investigation
V. Alignment
VI. Injury Test
VII. Use of Facts Otherwise Available
VIII. Subsidies Valuation
IX. Analysis of Programs
X. ITC Notification
XI. Disclosure and Public Comment
XII. Verification
XIII. Conclusion

[FR Doc. 2016–21997 Filed 9–13–16; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Analysis and Review of Ocean Exploration Video Products

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The notice document was published in the **Federal Register** volume 81, Page 61193, on September 6, 2016.

**DATES:** Written comments must be submitted on or before November 7, 2016.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Nick Pawlenko, LTJG/NOAA. NOAA Office of Ocean Exploration and Research, 215 South Ferry Road, Narragansett, RI 02882 (401) 874–6478.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This request is for a new information collection.

Telepresence uses satellite communication from ship to shore to bring the unknown ocean to the screens of scientists and the general public in their homes, schools or offices. With technology constantly evolving it is important to address the needs of the shore based scientists and public to maintain a high level of participation. We will use voluntary surveys to identify the needs of users of data, best approaches to leverage expertise of shore based participants and to create a "Citizen Science" web portal for meaningful public engagement focused on

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2016.

**Sarah Brabson,**

*NOAA PRA Clearance Officer.*

[FR Doc. 2016–21722 Filed 9–13–16; 8:45 am]

**BILLING CODE 3510–KD–P**

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Digital Economy Board of Advisors Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Digital Economy Board of Advisors. The Board advises and provides recommendations to the Secretary of Commerce, through the Assistant Secretary of Commerce for Communications and Information and the National Telecommunications and Information Administration (NTIA), on a broad range of issues concerning the digital economy and Internet policy.

**DATES:** The meeting will be held in two sessions on September 30, 2016, from 8:30 a.m. to 12:30 p.m., Pacific Daylight Time (PDT), and from 1:30 p.m. to 2:30 p.m. PDT.

**ADDRESSES:** The meeting will be held at Mozilla, 331 E. Evelyn Avenue, Mountain View, CA 94041. Public comments may be mailed to: Digital Economy Board of Advisors, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230 or emailed to *DEBA@ntia.doc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Remaley, Designated Federal Officer (DFO), at (202) 482–3821 or *DEBA@ntia.doc.gov;* and/or visit NTIA's Web site at *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

**SUPPLEMENTARY INFORMATION:**

*Background:* Economic prosperity is increasingly tied to the digital economy, which is a key driver of competitiveness, business expansion, and innovation. Indeed, virtually every modern company relies on the Internet to grow and thrive. As a result, the Department of Commerce (Department) has made technology and Internet policy a top priority, investing resources to address challenges and opportunities businesses face in a global economy.

Last year, the Secretary of Commerce unveiled the Department's Digital Economy Agenda, which will help businesses and consumers realize the potential of the digital economy to advance growth and opportunity. The Agenda focuses on four key objectives: Promoting a free and open Internet worldwide; promoting trust online;

ensuring access for workers, families, and companies; and promoting innovation. To support the Agenda, the Secretary directed NTIA to create the Digital Economy Board of Advisors as a mechanism for receiving regular advice from leaders in industry, academia, and civil society. See Committee Charter at *https://www.ntia.doc.gov/files/ntia/publications/deba_charter_12222015.pdf.*

The Digital Economy Board of Advisors convened its first meeting on May 16, 2016, to determine preliminary priorities and work streams. The meeting on September 30, 2016, will be the second full meeting of the Board.

This Board is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. 904(b). The Board functions solely as an advisory body in compliance with the FACA. For more information about the Board, visit *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

*Matters to be Considered:* The Board provides independent advice and recommendations to the Secretary, through the Assistant Secretary, on a broad range of policy issues impacting the digital economy. The Board's mission is to provide advice to the Department on increasing domestic prosperity, improving education, and facilitating participation in political and cultural life through the application and expansion of digital technologies. The Board's advice focuses on ensuring the Internet continues to thrive as an engine of growth, innovation, and free expression. The Department will use the advice provided by the Board to inform its decision-making processes and to advance Administration goals.

NTIA will post a detailed agenda on its Web site, *https://www.ntia.doc.gov/category/digital-economy-board-advisors,* prior to the meeting. To the extent that the meeting time and agenda permit, any member of the public may speak to or otherwise address the Board regarding the agenda items during the meeting.

*Time and Date:* The meeting will be held in two sessions on September 30, 2016, from 8:30 a.m. to 12:30 p.m., Pacific Daylight Time, and from 1:30 p.m. to 2:30 p.m. PDT. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, *https://www.ntia.doc.gov/category/digital-economy-board-advisors,* for the most up-to-date meeting agenda and access information for the meeting.

*Place:* The meeting will be held at Mozilla, 331 E. Evelyn Avenue, Mountain View, CA 94041. Public comments may be mailed to: Digital Economy Board of Advisors, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Ms. Remaley at (202) 482–3821 or *DEBA@ntia.doc.gov* at least five (5) business days before the meeting.

*Status:* Interested parties are invited to attend and to submit written comments to the Board at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Board in advance of the meeting must send them to NTIA at the above-listed address. Comments must be received five (5) business days before the scheduled meeting date to provide sufficient time for review. Comments received after this date will be distributed to the Board, but may not be reviewed prior to the meeting. We also request that comments be submitted electronically to *DEBA@ntia.doc.gov* with the subject: "DEBA Second Meeting Comment." Comments provided via email also may be submitted in writing.

*Records:* NTIA maintains records of all Board proceedings. Board records are available for public inspection at NTIA's Washington, DC office at the address above. Documents, including the Board's charter, member list, agendas, minutes, and any reports are available on NTIA's Web site at *https://www.ntia.doc.gov/category/digital-economy-board-advisors.*

Dated: September 9, 2016.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 2016–22056 Filed 9–13–16; 8:45 am]

**BILLING CODE 3510–60–P**

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## BUREAU OF CONSUMER FINANCIAL PROTECTION

## Community Bank Advisory Council Meeting

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (CFPB or Bureau). The notice also describes the functions of the Council. Notice of the meeting is permitted by section 9 of the CBAC Charter and is intended to notify the public of this meeting.

**DATES:** The meeting date is Thursday, September 29, 2016, 3:30 p.m. to 5:00 p.m. eastern daylight time.

**ADDRESSES:** The meeting location is the Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

**FOR FURTHER INFORMATION CONTACT:** Crystal Dully, Outreach and Engagement Associate, 202–435–9588, *CFPB_CABandCouncilsEvents@cfpb.gov,* Consumer Advisory Board and Councils Office, External Affairs, 1275 First Street NE., Washington, DC 20002.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 9(d) of the CBAC Charter states:

> (1) Each meeting of the Council shall be open to public observation, to the extent that a facility is available to accommodate the public, unless the Bureau, in accordance with paragraph (4) of this section, determines that the meeting shall be closed. The Bureau also will make reasonable efforts to make the meetings available to the public through live recording. (2) Notice of the time, place and purpose of each meeting, as well as a summary of the proposed agenda, shall be published in the **Federal Register** not more than 45 or less than 15 days prior to the scheduled meeting date. Shorter notice may be given when the Bureau determines that the Council's business so requires; in such event, the public will be given notice at the earliest practicable time. (3) Minutes of meetings, records, reports, studies, and agenda of the Council shall be posted on the Bureau's Web site (*www.consumerfinance.gov*). (4) The Bureau may close to the public a portion of any meeting, for confidential discussion. If the Bureau closes a meeting or any portion of a meeting, the Bureau will issue, at least annually, a summary of the Council's activities during such closed meetings or portions of meetings.

Section 2 of the CBAC Charter provides: "Pursuant to the executive and administrative powers conferred on the Bureau by Section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Community Bank Advisory Council to consult with the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less."

Section 3 of the CBAC Charter states: "a) The CFPB supervises depository institutions and credit unions with total assets of more than $10 billion and their respective affiliates, but other than the limited authority conferred by § 1026 of the Dodd-Frank Act, the CFPB does not have supervisory authority regarding credit unions and depository institutions with total assets of $10 billion or less. As a result, the CFPB does not have regular contact with these institutions, and it would therefore be beneficial to create a mechanism to ensure that their unique perspectives are shared with the Bureau. Small Business Regulatory Enforcement Fairness Act (SBREFA) panels provide one avenue to gather this input, but participants from community banks must possess no more than $175 million in assets, which precludes the participation of many. b) The Advisory Council shall fill this gap by providing an interactive dialogue and exchange of ideas and experiences between community bankers and Bureau staff. c) The Advisory Council shall advise generally on the Bureau's regulation of consumer financial products or services and other topics assigned to it by the Director. To carry out the Advisory Council's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The output of Advisory Council meetings should serve to better inform the CFPB's policy development, rulemaking, and engagement functions."

## II. Agenda

The Community Bank Advisory Council will discuss youth financial capability and debt collection.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov*, 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. CFPB will strive to provide, but cannot guarantee that accommodation will be provided for late requests.

Individuals who wish to attend the Community Bank Advisory Council meeting must RSVP to *cfpb_cabandcouncilsevents@cfpb.gov* by noon, Wednesday, September 28, 2016. Members of the public must RSVP by the due date and must include "CBAC" in the subject line of the RSVP.

## III. Availability

The Council's agenda will be made available to the public on Wednesday, September 14, 2016, via *consumerfinance.gov*. Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and transcript of this meeting will be available after the meeting on the CFPB's Web site *consumerfinance.gov*.

Dated: September 8, 2016.

**David Uejio,**

*Acting Chief of Staff, Bureau of Consumer Financial Protection.*

[FR Doc. 2016–22091 Filed 9–13–16; 8:45 am]

BILLING CODE 4810–AM–P

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# DEPARTMENT OF DEFENSE

## Department of the Navy

## Notice of Availability of Record of Decision for the Final Environmental Impact Statement for Land-Water Interface and Service Pier Extension at Naval Base Kitsap Bangor, Kitsap County, Washington

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy (Navy), after carefully weighing the operational and environmental consequences of the proposed action, announces its decision to construct and operate a Land-Water Interface (LWI) in Hood Canal on the waterfront of Naval Base (NAVBASE) Kitsap Bangor, Washington (WA). The Navy will implement LWI Alternative 3, Port Security Barrier Modifications, which is the Preferred Alternative in the Final Environmental Impact Statement (EIS) of July 2016 for LWI and Service Pier Extension (SPE), NAVBASE Kitsap Bangor, WA. LWI Alternative 3 is also the environmentally preferred alternative and will fully meet the Navy's purpose and need to comply with Department of Defense directives to protect Navy TRIDENT submarines from increased and evolving threats; prevent the seizure, damage, or destruction of military assets; enhance security within the Waterfront Restricted Area; and comply with security requirements at NAVBASE Kitsap Bangor. Although the proposed SPE project was addressed in the Final EIS, a Navy decision on that project has been deferred and the details of that project are not discussed further in the Record of Decision (ROD).

**SUPPLEMENTARY INFORMATION:** The complete text of the ROD is available for public viewing on the project Web site at *https://www.nbkeis.com/lwi/Welcome.aspx* along with the Final EIS and supporting documents. Single copies of the ROD will be made available upon request by contacting: LWI and SPE EIS Project Manager, Naval Facilities Engineering Command Northwest, 1101 Tautog Circle, Silverdale, WA 98315–1101, 360–396–0029.

Dated: September 8, 2016.

**N.A. Hagerty-Ford,**

*Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 2016–22054 Filed 9–13–16; 8:45 am]

BILLING CODE 3810–FF–P

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# DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Project No. 9842–000]

## Mr. Ray F. Ward; Notice of Authorization for Continued Project Operation

On August 28, 2014 Mr. Ray F. Ward, licensee for the Ward Mill Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Ward Mill Hydroelectric Project facilities are located on the Watauga River, in the Township of Laurel Creek, Watauga County, North Carolina.

The license for Project No. 9842 was issued for a period ending August 31, 2016. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the

Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 9842 is issued to the licensee for a period effective September 1, 2016 through August 31, 2017 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 31, 2017, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Mr. Ray F. Ward, is authorized to continue operation of the Ward Mill Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: September 7, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–22014 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14504–001]**

### FFP Project 121, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. Type of Filing: Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. Project No.: 14504–001.

c. Date Filed: July 26, 2016.

d. Submitted By: Rye Development, LLC on behalf of FFP Project 121, LLC.

e. Name of Project: New Cumberland Locks and Dam Hydroelectric Project.

f. Location: At the existing Army Corps of Engineers' New Cumberland Locks and Dam on the Ohio River in Jefferson County, Ohio and Hancock County, West Virginia. The project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. Filed Pursuant to: 18 CFR 5.3 of the Commission's regulations.

h. Applicant Contact: Mr. Erik Steimle, Vice President—Development, Rye Development, LLC, 334 NW 11th Ave., Portland, OR 97209; (503) 998–0230; email: *erik@ryedevelopment.com.*

i. FERC Contact: Andy Bernick at (202) 502–8660; or email at *andrew.bernick@ferc.gov.*

j. FFP Project 121, LLC filed its request to use the Traditional Licensing Process on July 26, 2016. FFP Project 121, LLC provided public notice of its request on July 29 through August 4, 2016. In a letter dated September 6, 2016, the Director of the Division of Hydropower Licensing approved FFP Project 121, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Ohio and West Virginia State Historic Preservation officers, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Project 121, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. FFP Project 121, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 6, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–22015 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC14–78–003.

*Applicants:* NRG Energy, Inc.

*Description:* Request for Amended Blanket Authorization of NRG Energy, Inc., et al.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5429.

*Comments Due:* 5 p.m. ET 9/27/16.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG16–146–000.

*Applicants:* Indeck Niles, LLC.

*Description:* Self-Certification of exempt wholesale generator ("EWG") status of Indeck Niles, LLC.

*Filed Date:* 9/7/16.

*Accession Number:* 20160907–5110.

*Comments Due:* 5 p.m. ET 9/28/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2331–058; ER10–2319–049; ER10–2317–049; ER13–1351–031; ER10–2330–056.

*Applicants:* J.P. Morgan Ventures Energy Corporation, BE Alabama LLC, BE CA LLC, Florida Power Development LLC, Utility Contract Funding, L.L.C.

*Description:* Notice of Non-Material Change in Status of the J.P. Morgan Sellers.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5434.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER15–1706–004.

*Applicants:* Newark Energy Center, LLC.

*Description:* Compliance filing: Errata re Settlement Compliance Filing re EL15–97 et al to be effective 9/21/2015.

*Filed Date:* 9/7/16.

*Accession Number:* 20160907–5059.

*Comments Due:* 5 p.m. ET 9/28/16.

*Docket Numbers:* ER15–2631–004.

*Applicants:* Odell Wind Farm, LLC.

*Description:* Notice of Non-Material Change in Status of Odell Wind Farm, LLC.

*Filed Date:* 9/6/16.
*Accession Number:* 20160906–5430.
*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–915–001.
*Applicants:* Comanche Solar PV, LLC.
*Description:* Notice of Non-Material Change in Status of Comanche Solar PV, LLC.
*Filed Date:* 9/6/16.
*Accession Number:* 20160906–5433.
*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–1718–001.
*Applicants:* Tesoro Refining & Marketing Company LLC.
*Description:* Market-Based Triennial Review Filing: Tesoro Amended Triennial Review Filing to be effective N/A.
*Filed Date:* 9/7/16.
*Accession Number:* 20160907–5088.
*Comments Due:* 5 p.m. ET 11/7/16.

*Docket Numbers:* ER16–2360–000.
*Applicants:* Great Western Wind Energy, LLC.
*Description:* Supplement to August 2, 2016 Great Western Wind Energy, LLC tariff under ER16–2360.
*Filed Date:* 9/6/16.
*Accession Number:* 20160906–5439.
*Comments Due:* 5 p.m. ET 9/20/16.

*Docket Numbers:* ER16–2557–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 1139R2 Southwestern Public Service Company NITSA NOA Notice of Cancellation to be effective 2/1/2016.
*Filed Date:* 9/7/16.
*Accession Number:* 20160907–5062.
*Comments Due:* 5 p.m. ET 9/28/16.

*Docket Numbers:* ER16–2558–000.
*Applicants:* Pacific Gas and Electric Company.
*Description:* § 205(d) Rate Filing: E&P Agreements for Alamo Springs Solar 1 and 2 to be effective 9/8/2016.
*Filed Date:* 9/7/16.
*Accession Number:* 20160907–5123.
*Comments Due:* 5 p.m. ET 9/28/16.

*Docket Numbers:* ER16–2559–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Queue Position Z2–089/AA2–099, Original Service Agreement No. 4525 to be effective 8/8/2016.
*Filed Date:* 9/7/16.
*Accession Number:* 20160907–5177.
*Comments Due:* 5 p.m. ET 9/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2016.

**Nathaniel J. Davis, Sr.,**
*Deputy Secretary.*

[FR Doc. 2016–22041 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM12–17–000; Docket No. RM01–5–000]**

## Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines; Electronic Tariff Filings; Notice of Changes to Etariff Part 284 Type of Filing Codes

As the Commission recently stated in *Atmos Pipeline—Texas* [1] and *Narragansett Electric Company,* [2] all filings that invoke Part 284 of the Commission's regulations must be made via eTariff. Take notice that, effective November 7, 2016, the list of available eTariff Type of Filing Codes (TOFC) [3] will be modified as per the Appendix to this notice.[4]

For a more complete guide on filings under Natural Gas Policy Act of 1978 section 311 and Natural Gas Act section 1(c), see *http://www.ferc.gov/industries/gas/gen-info/intrastate-trans.asp.* For further information, contact James Sarikas, Office of Energy Market Regulation at (202) 502–6831 or *James.Sarikas@ferc.gov.*

Dated: September 6, 2016.

**Kimberly D. Bose,**
*Secretary.*

[FR Doc. 2016–22016 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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[1] 156 FERC ¶ 61,094 (2016). State Rate Certification filings should use TOFC 1360, or TOFC 1260 for the optional filing procedures under section 284.123(g).

[2] 155 FERC ¶ 61,159 (2016). A Hinshaw pipeline filing a cost and throughput study should use TOFC 790, or TOFC 1370 for the optional filing procedures under section 284.123(g).

[3] The type of filing business process categories are described in the *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300, and 341 Tariff Filings* (August 12, 2013), found on the Commission's Web site, *http://www.ferc.gov/docs-filing/etariff/implementation-guide.pdf.*

[4] These TOFC were most recently modified in Order No. 781, effective September 30, 2013, which revised Part 284 to provide optional notice procedures. *Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines,* 144 FERC ¶ 61,034 (2013).

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Filings Instituting Proceedings*

*Docket Numbers:* RP11–2473–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Report Filing: 2015 Cash Pool Filing.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5082.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP11–2474–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Report Filing: 2015 Cash Pool Filing.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5078.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1222–000.
*Applicants:* Dominion Cove Point LNG, LP.
*Description:* Compliance filing DCP—2016 Revenue Crediting Report.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5070.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1223–000.
*Applicants:* Enable Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Filing—September 2016 CERC 1019 LER 8744 to be effective 9/1/2016.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5086.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1224–000.
*Applicants:* Cimarron River Pipeline, LLC.
*Description:* § 4(d) Rate Filing: Fuel Tracker 2016—Winter Season Rates to be effective 11/1/2016.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5133.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1225–000.
*Applicants:* Columbia Gulf Transmission, LLC.
*Description:* Annual Cash-Out Report of Columbia Gulf Transmission, LLC under RP16–1225.

*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5138.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1226–000.
*Applicants:* ANR Pipeline Company.
*Description:* § 4(d) Rate Filing: Vectren Energy Amendment to be effective 9/1/2016.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5182.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1227–000.
*Applicants:* Natural Gas Pipeline Company of America.
*Description:* § 4(d) Rate Filing: Madill Gas Processing to be effective 6/27/2016.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5236.
*Comments Due:* 5 p.m. ET 9/13/16.

*Docket Numbers:* RP16–1228–000.
*Applicants:* Trailblazer Pipeline Company LLC.
*Description:* § 4(d) Rate Filing: Order No. 587—Housekeeping to be effective 9/1/2016.
*Filed Date:* 9/2/16.
*Accession Number:* 20160902–5160.
*Comments Due:* 5 p.m. ET 9/14/16.

*Docket Numbers:* RP16–1229–000.
*Applicants:* Rockies Express Pipeline LLC.
*Description:* § 4(d) Rate Filing: Order No. 587–W, Housekeeping Filing to be effective 9/1/2016.
*Filed Date:* 9/2/16.
*Accession Number:* 20160902–5161.
*Comments Due:* 5 p.m. ET 9/14/16.

*Docket Numbers:* RP16–1230–000.
*Applicants:* Tallgrass Interstate Gas Transmission, L.
*Description:* § 4(d) Rate Filing: Order No. 587–W Housekeeping Filing to be effective 9/1/2016.
*Filed Date:* 9/2/16.
*Accession Number:* 20160902–5238.
*Comments Due:* 5 p.m. ET 9/14/16.

*Docket Numbers:* RP16–1231–000.
*Applicants:* Kern River Gas Transmission Company.
*Description:* § 4(d) Rate Filing: 2016 September Tenaska to be effective 9/7/2016.
*Filed Date:* 9/6/16.
*Accession Number:* 20160906–5300.
*Comments Due:* 5 p.m. ET 9/19/16.

*Docket Numbers:* RP16–1232–000.
*Applicants:* Columbia Gas Transmission, LLC.
*Description:* § 4(d) Rate Filing: Negotiated & Non-Conforming Service Agmt—Eclipse to be effective 10/1/2016.
*Filed Date:* 9/6/16.
*Accession Number:* 20160906–5301.
*Comments Due:* 5 p.m. ET 9/19/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

*Filings in Existing Proceedings*

*Docket Numbers:* RP16–440–005.
*Applicants:* ANR Pipeline Company.
*Description:* Compliance filing Compliance to RP16–440–004 to be effective 8/1/2016.
*Filed Date:* 9/1/16.
*Accession Number:* 20160901–5183.
*Comments Due:* 5 p.m. ET 9/13/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–22043 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER16–2541–000]**

## Pioneer Wind Park I, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pioneer Wind Park I, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 27, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–22044 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16–696–002.
*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* Compliance filing: 2016–09–08_2nd Amendment to Attachment X Funding Options Filing to be effective 6/24/2015.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5195.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2293–002.

*Applicants:* Drift Sand Wind Project, LLC.

*Description:* Tariff Amendment: MBR Tariff to be effective 9/23/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5151.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2560–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Service Agreement No. 4529 and Notice of Cancellation to be effective 8/8/2016.

*Filed Date:* 9/7/16.

*Accession Number:* 20160907–5202.

*Comments Due:* 5 p.m. ET 9/28/16.

*Docket Numbers:* ER16–2561–000.

*Applicants:* Sunflower Wind Project, LLC.

*Description:* Baseline eTariff Filing: MBR Application to be effective 10/15/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5177.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2562–000.

*Applicants:* Nicolis, LLC.

*Description:* § 205(d) Rate Filing: Amended and Restated CLGIA Co-Tenancy Agreement to be effective 9/6/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5185.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2563–000.

*Applicants:* Nicolis, LLC.

*Description:* § 205(d) Rate Filing: Shared Use Agreement Filing to be effective 9/6/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5191.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2564–000.

*Applicants:* Tropico, LLC.

*Description:* § 205(d) Rate Filing: Shared Use Agreement Filing to be effective 9/6/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5198.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2565–000.

*Applicants:* Tropico, LLC.

*Description:* § 205(d) Rate Filing: Amended and Restated CLGIA Co-Tenancy Agreement to be effective 9/6/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5199.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2566–000.

*Applicants:* Dynegy Midwest Generation, LLC.

*Description:* § 205(d) Rate Filing: Revised Rate Schedule to be effective 10/17/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5217.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2567–000.

*Applicants:* Median Energy Corp.

*Description:* Baseline eTariff Filing: MBR Application to be effective 11/8/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5243.

*Comments Due:* 5 p.m. ET 9/29/16.

*Docket Numbers:* ER16–2568–000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: Letter Agreement ACES Project—WDT 1250EXP to be effective 9/9/2016.

*Filed Date:* 9/8/16.

*Accession Number:* 20160908–5254.

*Comments Due:* 5 p.m. ET 9/29/16.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF15–792–000.

*Applicants:* SunE M5B Holdings, LLC.

*Description:* Refund Report of SunE M5B Holdings, LLC.

*Filed Date:* 9/7/16.

*Accession Number:* 20160907–5232.

*Comments Due:* 5 p.m. ET 9/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 8, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–22042 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR16–25–000]**

### Medallion Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on September 2, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2016), Medallion Pipeline Company, LLC (Medallion) filed a petition for a declaratory order seeking approval of the overall rate and tariff structure for a proposed expansion of Medallion's crude oil pipeline system, which will extend the geographic reach of the Medallion pipeline system and provide shippers with flexibility and new outlets for production, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on September 30, 2016.

Dated: September 7, 2016.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2016–22013 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG16–145–000.

*Applicants:* Cimarron Bend Wind Project II, LLC.

*Description:* Self-Certification of EG or FC of Cimarron Bend Wind Project II, LLC.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5366.

*Comments Due:* 5 p.m. ET 9/27/16.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER16–1912–001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: Deficiency Response in ER16–1912—Out-of-Merit Energy Clarification to be effective 7/1/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5419.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2285–001.

*Applicants:* Desert Wind Farm LLC.

*Description:* Tariff Amendment: Amendment to 1 to be effective 9/24/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5298.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2462–001.

*Applicants:* Oregon Clean Energy, LLC.

*Description:* Tariff Amendment: Amendment to Application for MBR to be effective 10/21/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5299.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2552–000.

*Applicants:* Municipal Energy of PA, LLC.

*Description:* Notice of Cancellation of Market-Based Rate Tariff of Municipal Energy of PA, LLC.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5316.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2553–000.

*Applicants:* Avista Corporation.

*Description:* § 205(d) Rate Filing: Avista Corp FERC Rate Schedule No. 184 extension to be effective 10/1/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5296.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2554–000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2016–09–06_Order 809 True-up filing to be effective 11/5/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5297.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2555–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Queue Position X2–012/AA2–008, Service Agreement No. 3569 to be effective 8/4/2016.

*Filed Date:* 9/6/16.

*Accession Number:* 20160906–5369.

*Comments Due:* 5 p.m. ET 9/27/16.

*Docket Numbers:* ER16–2556–000.

*Applicants:* Hinson Power Company, LLC.

*Description:* Tariff Cancellation: Cancellation (Complete Tariff ID) to be effective 9/7/2016.

*Filed Date:* 9/7/16.

*Accession Number:* 20160907–5015.

*Comments Due:* 5 p.m. ET 9/28/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 7, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–22040 Filed 9–13–16; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9952–24–OA]**

### Notification of a Teleconference of the Science Advisory Board Economy-Wide Modeling Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Economy-Wide Modeling Panel.

**DATES:** The public teleconference will be held on December 7, 2016 from 1:00 p.m. to 5:00 p.m. (Eastern Time).

**ADDRESSES:** The teleconference will be held by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding the public teleconference or public meeting may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voicemail at (202) 564–2073 or via email at *stallworth.holly@epa.gov.* General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA) codified at 42 U.S.C. 4365, to provide independent scientific and technical peer review, advice, consultation, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations. Pursuant to FACA and EPA policy, notice is hereby given that the SAB Economy-Wide Modeling Panel will hold a public teleconference to discuss its draft responses on charge questions from EPA's National Center for Environmental Economics and the Office of Air and Radiation on economic analysis for air regulations at EPA.

The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Background information on the SAB Economy-Wide Modeling Panel can be found at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Economywide%20modeling?OpenDocument.*

*Availability of the meeting materials:* Agendas will be posted on the SAB Web site prior to the December 7, 2016 teleconference. To locate meeting materials, go to *http://epa.gov/sab* and click on the meeting date. The Economy-Wide Modeling Panel's draft report will be posted at this URL. EPA's review document(s), charge to the Panel and other background materials are also available at the URL above. For questions concerning EPA's review materials on economy-wide modeling, please contact Dr. Ann Wolverton, EPA National Center for Environmental Economics at *wolverton.ann@epa.gov* or 202–566–2278.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments on the topic of this advisory activity, including the charge to the panel and the EPA review documents, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information.

*Oral Statements:* In general, individuals or groups requesting an oral presentation will be limited to three minutes per speaker for the teleconference. Interested parties should contact Dr. Holly Stallworth, DFO, in writing (preferably via email), at the contact information noted above, by November 30, 2016 to be placed on the list of public speakers for the teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by November 30, 2016 to be considered for the teleconference. Written statements should be supplied to the DFO, preferably in electronic format via email. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Stallworth at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: September 6, 2016.

**Khanna Johnston,**

*Acting Deputy Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2016–22093 Filed 9–13–16; 8:45 am]

**BILLING CODE 6560–50–P**

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## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Sunshine Act; Notice of Meeting; Federal Retirement Thrift Investment Board Member Meeting, September 19, 2016 8:30 a.m. (In-Person), 77 K Street NE., Board Room 10th Floor, Washington, DC 20002

**Agenda**

**Open Session**

1. Approval of the Minutes of the August 22, 2016 Board Member Meeting
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance Report
   (c) Legislative Report
3. FY17 Budget Review and Approval
4. Vendor Financials
5. Blended Retirement

**Closed Session**

Information covered under 5 U.S.C. 552b(c)(4) and (c)(9)(B).

**Adjourn**

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: September 8, 2016.

**Megan Grumbine,**

*General Counsel.*

[FR Doc. 2016–21990 Filed 9–12–16; 4:15 pm]

**BILLING CODE 6760–01–P**

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission ("Commission" or "FTC").

**ACTION:** Notice.

**SUMMARY:** The FTC plans to conduct a qualitative survey of consumers who recently purchased an automobile and financed that purchase through a dealer. Through a survey research firm, the FTC seeks to interview consumers about the consumers' experience in selecting, purchasing, and financing an automobile from a dealer. The interviews also will involve reviewing the consumer's documentation from the purchase and financing. This is the second of two notices required under the Paperwork Reduction Act ("PRA") in which the FTC seeks public comments on its proposed consumer research. The proposed information collection described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the PRA.

**DATES:** Comments must be received on or before October 14, 2016.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Auto Buyer Consumer Survey, Project No. P154800" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/autobuyersurveypra2,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Carole Reynolds, 202–326–3230, or Teresa Kosmidis, 202–326–3216, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Mail Stop–CC–10232, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

For many consumers, aside from housing costs, a car purchase is their most expensive financial transaction. With prices averaging more than $34,000 for a new vehicle and $20,000 for a used vehicle from a dealer, most consumers seek to finance the purchase of a new or used car.[1] Consumers may seek financing from their local bank or credit union, as well as from the dealer selling the vehicle. Financing obtained at the dealership, whether it is provided by a third party or directly by the dealer, may provide benefits for many consumers, such as convenience, special manufacturer-sponsored programs, access to a variety of banks and financial entities, or access to credit otherwise unavailable to a buyer. Financing that is offered or arranged by dealers, however, can be a complicated, opaque process and potentially involve unfair or deceptive practices.[2]

As the nation's longstanding consumer protection agency, the Commission is committed to protecting consumers in connection with auto-related transactions. The Commission has broad authority to protect consumers in this area. The agency enforces the FTC Act, which prohibits unfair and deceptive practices by a wide variety of entities, including automobile dealers.[3] Also pursuant to the Dodd-Frank Act,[4] the FTC is authorized to prescribe rules under Section 553 of the Administrative Procedure Act ("APA")[5] with respect to unfair or deceptive acts or practices by motor vehicle dealers.[6]

In recent years, the FTC has been particularly active in enforcement and other initiatives related to automobile transactions. Since 2011, the FTC has brought more than 25 cases protecting consumers in this area, including a sweep of ten actions against automobile dealers for deceptive advertising, and a coordinated federal-state effort that yielded more than two hundred automobile actions for fraud, deception, and other illegal practices.[7] In 2011, the FTC conducted three automobile "roundtables" around the country, where panelists from government, consumer advocacy groups, and industry discussed consumer protection issues related to sales, financing, and leasing practices involving automobiles; the Commission also sought and received public comments on these issues.[8] Additionally, the FTC has produced many consumer education and business education materials related to automobile purchasing and financing.[9]

The FTC's proposed survey will explore in more detail the experience of actual consumers who recently purchased and financed an automobile from a dealer.[10] The survey is intended to inform the Commission about current consumer protection issues that may exist and that could be addressed through FTC action, including enforcement initiatives, rulemaking, or education.

## II. The FTC's Proposed Study

### *A. Study Description*

The FTC plans to conduct a qualitative survey of consumer experiences in recent purchases of automobiles that were financed through automobile dealers. The survey will involve an initial sample of five in-person consumer interviews to test the survey questionnaire, followed by in-person interviews of 40 consumers, with the option to interview 40 more, if the FTC deems the additional interviews likely to be helpful. For the initial 40 consumers, the FTC seeks to interview approximately 20 consumers who have "prime" or "above subprime" credit scores and approximately 20 consumers who have "subprime" credit scores in order to learn about the consumer's experience with purchasing and financing in these two market segments.[11] Generally, the sample group of consumers will be racially diverse and will include participants of both sexes. The contractor also generally will strive to obtain a mix of ages and income levels, as well as a mix of consumers who purchased and financed a vehicle from franchise, independent, and buy here pay here dealers. The FTC has contracted with Shugoll Research, Inc. ("Shugoll"), a consumer research firm located in metropolitan Washington, DC, with substantial experience conducting consumer surveys, to locate the participants, conduct the survey, and write a brief methodological report and any other report if requested by the FTC. Shugoll will select the consumers from a pool of people who previously have indicated that they are willing to participate in surveys but who have not participated in any in-depth survey interviews in the past year. Shugoll will identify interview participants who have purchased an automobile, from a dealer in the greater Washington, DC metropolitan area, in the previous six months, and used financing offered or arranged by the dealer to make the purchase. The participants also must have kept the documentation (*e.g.,* credit contract) he or she received as part of the purchase and financing.[12] The consumer's credit score will be used in the survey; if survey participants do not have their credit score, the consumer may obtain it through services that provide this information and provide documentation of the score to Shugoll.[13] The interview participants and their personal identifying information will be anonymized in material received by the FTC, and will be vigorously protected by the survey firm.[14]

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[1] As of December 2015, the average price of a new car sold in the U.S. was $34,428, according to Kelley Blue Book. *See* Kelley Blue Book, Record New-Car Transaction Prices Reported In December 2015, According to Kelley Blue Book (Jan. 5, 2016), *available at http://mediaroom.kbb.com/record-new-car-transaction-prices-reported-december-2015.* The average price of a used car is $20,057. *See* Used Car Prices Hold Up in Strong New-Vehicle Market), J.D. Power (Sept. 8, 2015), *available at http://www.jdpower.com/cars/articles/used-cars/used-car-prices-hold-strong-new-vehicle-market.* Used cars available from independent dealers and from "buy here pay here" dealers have been lower in price. For example, in 2014, over 42% of cars were sold at an average sales price of $5,000–$10,000 at independent dealers; the average cost of cars was $7,150 at "buy here pay here" dealers. *See* 2015 NIADA Used Car Industry Report, at 6 and 16, respectively, *available at http://www.niada.com/publications.php.*

[2] *See infra* notes 7–9 and accompanying text.

[3] 15 U.S.C. 45(a). The Commission also has enforcement authority over automobile dealers under various other statutes, including, for example, the Truth in Lending Act, 15 U.S.C. 1601–1666j, and its implementing Regulation Z, 12 CFR 226, 12 CFR 1026; the Consumer Leasing Act, 15 U.S.C. 1667–1667f, and its implementing Regulation M, 12 CFR 213, 12 CFR 1013; the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, and its implementing Regulation B, 12 CFR 202, 12 CFR 1002; the Electronic Fund Transfer Act, 15 U.S.C. 1693–1693r, and its implementing Regulation E, 12 CFR 205, 12 CFR 1005; and the privacy and safeguard provisions of the Gramm-Leach Bliley Act, 15 U.S.C. 6801–6809, and related privacy rule, 16 CFR 313, and safeguards rule, 16 CFR 314.

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1029, 12 U.S.C. 5519.

[5] 5 U.S.C. 553.

[6] *See* Dodd-Frank Act § 1029(d), 12 U.S.C. 5519(d). Under the Dodd-Frank Act, the term "motor vehicle dealer" refers to "any person or resident in the United States, or any territory of the United States, who (A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and (B) takes title to, holds an ownership in, or takes physical custody of motor vehicles." *Id.* at 1029(f)(2), 12 U.S.C. 5519(f)(2). The term "motor vehicle" includes, among other things, motorcycles, motor homes, recreational vehicle trailers, recreational boats and marine equipment, and other vehicles titled and sold through dealers. *See id.* at 1029(f)(1), 12 U.S.C. 5519(f)(1).

[7] *See* Press Releases, FTC Announces Sweep Against 10 Auto Dealers (Jan. 9, 2014), *available at http://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers;* FTC Approves Final Consent Orders in Deceptive Auto Dealers' Ad Cases (May 6, 2014), *available at http://www.ftc.gov/news-events/press-releases/2014/05/ftc-approves-final-consent-orders-deceptive-auto-dealers-ads* and FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing (Mar. 26, 2015), *available at https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown. See also https://www.ftc.gov/news-events/media-resources/consumer-finance/auto-marketplace.*

[8] *See* Press Release, FTC Continues To Seek Public Input On Consumer Issues in Motor Vehicle Sales, Financing and Leasing, *available at http://www.ftc.gov/news-events/press-releases/2012/02/ftc-continues-seek-public-input-consumer-issues-motor-vehicle. See also* Public Comments, #369: FTC Roundtables Will Address Consumer Issues in Motor Vehicle Financing and Leasing; FTC File No. P104811, *available at https://www.ftc.gov/policy/public-comments/initiative-369.*

[9] *See, e.g.,* Understanding Vehicle Financing (revised January 2014), produced in cooperation with the American Financial Services Education Foundation and the National Automobile Dealers Association, *available at http://www.consumer.ftc.gov/articles/0056-understanding-vehicle-financing;* Lesley Fair, FTC, Operation Ruse Control: 6 tips if cars are up your alley (Mar. 26, 2015), *available at https://www.ftc.gov/news-events/blogs/business-blog/2015/03/operation-ruse-control-6-tips-if-cars-are-your-alley;* Colleen Tressler, FTC, Check out the auto dealer and financing before you sign (Oct. 31, 2014), *available at http://www.consumer.ftc.gov/blog/check-out-auto-dealer-and-financing-you-sign.*

[10] For purposes of this survey, "automobile" refers to cars, minivans, SUVs, and light trucks—all of which consumers commonly purchase and finance through automobile dealers. Depending on the consumers who participate in the survey, the dealers could potentially include: (1) Franchise dealers (*e.g.,* that have franchises with automobile manufacturers and may offer consumers financing that is assigned to "captive" finance companies—subsidiaries owed by the manufacturers—or to other finance entities); (2) independent dealers (*e.g.,* that do not have franchises with automobile manufacturers and may offer consumers financing that is assigned to finance entities that are not subsidiaries owned by the manufacturers but that may be an entity related to or associated with the dealer); and (3) "buy here pay here" dealers (*e.g.,* a type of independent dealer that offers consumers in-house financing that the dealers usually retain, although some larger dealers may assign the financing to "buy here pay here" finance entities.

[11] For example, Experian categorizes consumers with scores below 601 as subprime. Other scores are above subprime, and categorized as nonprime or prime. *See generally* Experian, State of the Automotive Finance Market, A look at loans and leases in Q1 2016, *available at http://www.experian.com/automotive/automotive-credit-webinar.html.*

Shugoll will conduct interviews lasting approximately 90 minutes with each consumer. The interviews will focus on, among other things:

- The consumer's experience in shopping for and choosing an automobile;
- the process of agreeing to a price for the automobile;
- the process of trading in the consumer's used automobile, if applicable;
- the consumer's experience in obtaining financing, and discussion of any GPS or tracking device installed in connection with the financing; [15]
- additional products or services the dealer may have offered;
- contracts and post-purchase experience, such as that related to review and signing of paperwork;
- other points raised by the consumer about the process; [16] and
- the consumer's overall perception of the purchase experience.

The interviews will conclude by reviewing the consumer's documentation and exploring the consumer's understanding of that documentation. The walk-through of the consumer's documents will include: [17]

- The consumer's overall understanding of the documents;
- a review of the available documents;
- a review of the terms of the deal;
- the consumer's views of the documents and terms;
- discussion of any other documents; and
- other points raised by the consumer about the documents.

Participation in the survey will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they can provide useful insights into consumer experiences and understanding of the automobile purchasing and financing process at the dealership.

### *B. PRA Burden Analysis*

In its January 7, 2016 Notice,[18] the FTC provided PRA burden estimates for the proposed research. Staff believes that these estimates generally remain applicable and appropriate for the survey; however, as noted below, staff has adjusted certain aspects of the estimates after consultation with the contractor for the study.

*A. Estimated number of respondents:* 170.

*B. Burden Hours:* 367 hours.[19]

*C. Labor Costs: Negligible.*

More specifically, staff estimates that the contractor's preliminary review of consumers to select for the survey would involve no more than 170 consumers (at most twice the maximum number of consumers—85—that would be involved in the survey).[20]

The estimated hours are a total of the time for preliminary review, the pretest, the interviews, and obtaining credit scores. The preliminary review will include topics such as whether the consumer has recently purchased a car and has participated in a survey in the past year, as well as the consumer's self-identified race and origin. This review, done by phone, could require no more than 12 minutes per consumer, for 34 hours (170 respondents × 12 minutes).[21] Staff also estimates that at most, each of the 170 consumers would take approximately 30 minutes to locate or ascertain whether they have their documentation and their credit score for the survey, for 85 hours. Thus, the preliminary review total would be 119 hours.

Staff will pretest the questionnaire and interview materials with approximately five respondents to ensure that questions are easily understood. Based on further FTC staff discussions with the contractor, the survey will involve three additional backup consumers to be available in the event that any of the five scheduled respondents do not show up for the pretest. Staff estimates that each interview (including the documentation review) will take approximately 90 minutes, and 60 minutes travel time to and from the survey. Allowing for an extra ten minutes for questions unique to the pretest, the pretest will total approximately 19 hours (5 respondents × 160 minutes each for the pretest, plus

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[12] In addition, two other screening criteria apply: (1) Consumers and immediate family must not work in advertising, public relations, or market research, nor in the automobile industry or a finance company; and (2) consumers must be able and willing to provide answers that can be clearly understood in English.

[13] For privacy purposes, Shugoll will not obtain the credit score for the consumer, but will explain to consumers who do not have their score that various sources are available for promptly obtaining this information, including some that do not charge.

[14] Shugoll will set up two secure databases for maintaining information about potential and selected survey participants. The firm will assign each consumer a random identification number ("random ID number"), and that information along with the consumer's identifying information will be maintained by the contractor in one database. The FTC will only have access to a second database that will include the random ID number with anonymized information about the consumers and redacted information regarding the consumers' purchase and finance documents. Thus, only redacted copies of consumer identifiers in purchase and finance documents will be maintained in the survey. The survey will utilize rigorous protections for privacy and security of consumer information.

[15] This interview topic now clarifies that discussion of any GPS or tracking devices could be included if part of the consumer's experience.

[16] The interview topics now clarify that the survey will consider other points that the consumer may raise about the process.

[17] The FTC staff has included the topics for the walk-through of the consumer's documents. The documents that the consumer may have for the purchase and financing could vary among consumers who participate.

[18] 81 FR 780.

[19] This is a total increase of 16 hours from the prior estimate.

[20] As described below, the contractor also would have 19 additional consumers (backups) on site as possible replacements for pretest and regular survey consumers who do not show-up for the interview. These consumers would add certain costs for time related to various aspects of the survey as indicated in the text, but they would not add to the total number of consumers participating in the survey interviews. Also, the 170 consumers include the additional maximum 19 pretest and regular survey backups.

[21] The FTC has reduced its estimate of needed preliminary review time from 15 minutes to 12 minutes (a 3-minute reduction for each consumer), based on the contractor's current estimate.

3 backups × 60 minutes travel time per backup, plus 2 (of the 3) backups × 100 minutes of maximum wait time per backup).[22]

Once the pretest is completed, the initial 40 interviews, including travel, will cumulatively total an estimated 108 hours: 60 hours for the interviews (*i.e.*, 40 interviews at 90 minutes each) plus 40 hours travel time to and from the interview facility for the 40 participants, cumulatively, plus eight additional hours, cumulatively, for eight additional participants' travel time to and from the interview facility as potential replacements for possible no-show participants.[23] If an additional 40 consumers are interviewed,[24] that will require an additional 108 hours, for the same reasons as above. Thus, for the interviews of 80 consumers, including travel time for 16 backup consumers, staff estimates that 216 hours will be required (80 respondents × 150 minutes each plus 16 backup consumers × 60 minutes each).[25]

Staff further estimates that approximately 75%, or 78, of the 85 survey participants and 19 backups who are potential participants (three pretest backups and 16 interview backups), for both pretest and interviews, do not already have their credit score and thus will procure it through the services that provide this information. Staff estimates that ten minutes per consumer will be required for this purpose, for a total of 13 hours (78 respondents × 10 minutes each).[26]

Thus, the FTC's survey will require 367 hours (119 hours for preliminary review + 19 hours for pretest + 216 hours for interviews + 13 hours for obtaining credit scores). The monetary cost per respondent should be negligible. The consumers who participate will already have or will obtain their credit score and provide documentation of that information to Shugoll.[27] Costs to obtain their credit score should be nil or negligible. Increasingly, Web sites offer free credit scores; additionally, credit score information often is available to consumers through credit sources they already have access to, such as credit card or other credit statements, in some cases.

Shugoll will pay respondents (including regular participants and backups) a reasonable and customary financial incentive for participation.[28] Participation will not require start up, capital, or labor expenditures by interview participants.

## III. Analysis of Comments

In response to the January 7, 2016 Notice, the Commission received 17 germane comments regarding the proposed collection of information.[29]

A majority of the commenters supported the need for the FTC's proposed study and/or recognized the importance of the topics and area to be studied, and suggested what they view as improvements or specific issues for the proposed study. Three comments questioned the need for the survey in view of the FTC's prior auto activities and/or raised questions about the purpose or objectivity of the survey.

*Center for Responsible Lending, National Council of La Raza, Americans for Financial Reform, Consumer Action, Consumers for Auto Reliability and Safety, NAACP, National Association of Consumer Advocates, National Consumer Law Center, National Urban League, Public Citizen, and U.S. PIRG:* This joint comment by 11 broad-based national consumer groups applauded the FTC for proposing a survey to explore issues in auto purchasing and financing. They noted the FTC's roundtables examined issues that persist in auto financing today, on which the interviews will shed additional light and serve to probe for information about consumers' treatment and experience. They noted that the information should help shape enforcement and regulatory efforts. They suggested that the survey size be increased to 80 consumers with an option for more consumers. They also suggested that Buy Here Pay Here ("BHPH") dealers be addressed separately, through 10–20 additional interviews exclusively focused on BHPH consumers. Finally, they suggested various survey questions or topics, including but not limited to those involving "yo yo financing scams" and add-on products or services. As noted above, the survey plan has an option for an additional 40 consumers. The FTC believes this size will provide useful information in this qualitative survey, about consumers' experiences and issues in the auto purchase and financing area. The information gleaned from this survey will help the agency prioritize subsequent initiatives to protect consumers in auto-related transactions, including selecting strategic areas of focus for enforcement, rulemaking, or education. The FTC appreciates the commenters' suggestions of topics and questions, and believes that the topics it has identified for the survey cover areas that will enable consumers to address broadly their experiences, including those noted in the comment such as occurrences after the contract is signed and add-on products or services.

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[22] After consultation with the contractor, the FTC has slightly increased its estimates of pretest time to account for the backups in the pretest, who are replacements for possible no-show consumers in the pretest. As noted above, three backups will experience travel time to and from the survey, of 60 minutes each, for a total of 180 additional minutes or three hours. Also, two of the backups would be available on site for approximately 200 minutes (each backup would be available to replace two consumers), and one of the backups would be available on site for approximately 100 minutes (to replace one consumer). Thus, the backups might experience replacement time for no-show consumers, which would not add participation time to the survey. However, if fewer consumers are no-shows, it is possible that a maximum of 100 minutes in participation time would apply for each of the two backups—a total of 200 minutes—while they wait to learn if they are needed for the next pretest segment after the initial pretest segment. As noted, the other time for the backups—100 minutes for each of the two backups, and 100 minutes for one backup—would be as replacement for scheduled pretests or, if the backups are not needed, they would be released promptly at the beginning of the sessions; neither would add participation time.

[23] As noted, the survey will involve consumers from the greater Washington, DC metropolitan area.

[24] The survey plan has an option for an additional 40 consumers, for a maximum of 80 consumers.

[25] The FTC has slightly increased its estimates of time for the regular interviews, to account for the possibility that backup consumers may be needed as replacements for no-show consumers. These eight additional consumers will experience travel time of 60 minutes each. They will not generate additional participation time: if they participate, they will replace the no-show participants; if not needed, they will be released promptly.

[26] The FTC has slightly increased its estimates for consumers to obtain credit scores, to account for the possibility that backups may participate and may not already have their credit scores.

[27] After consultation with the contractor, the FTC now plans to have consumers who do not already have their credit score obtain it before their interview with the contractor; the contractor will advise consumers of this approach during screening for the survey, which is voluntary. Consumers who do not have, or do not wish to obtain, their credit score will not participate in the survey. This approach will limit provision of unnecessary personal information to the contractor, and will facilitate the survey process, by avoiding delaying the pretest and/or regular interviews for the consumer to obtain his or her credit score information if the consumer does not have it.

[28] Shugoll also will pay regular participants' and backups' parking costs at the interview facility, which will be in Bethesda, Maryland and/or Alexandria, Virginia.

[29] The Commission received a total of 23 comments; 17 comments were germane, and are discussed below: A joint comment from the Center for Responsible Lending, the National Council of La Raza, NAACP and eight additional national consumer interest organizations (#633–6); the National Association of Consumer Advocates (#633–5); the National Automobile Dealers Association (#633–4); the National Independent Automobile Dealers Association (#633–7); a joint comment from the American Financial Services Association and the Consumer Bankers Association (#633–1); the Syracuse University College of Law, Office of Clinical Legal Education (#633–2); and 11 individuals. The six non-germane comments are duplicates, "test," or unrelated submissions. Public comments associated with the matter are available at *https://www.ftc.gov/policy/public-comments/initiative-633*.

*National Association of Consumer Advocates ("NACA"):* This consumer interest group supported a well-executed survey aimed at uncovering important data to assist the FTC in monitoring the marketplace and curbing unfair and deceptive practices in auto sales and lending. The group suggested that the survey should be large enough to provide an accurate representation of the population. It agreed with the FTC approach to obtain experiences from different populations and encouraged the FTC to include Native Americans, non-English speakers and military members. The FTC notes that this survey is not intended to be representative of the full population; one of its aims is to help the agency shape strategic priorities, including whether follow-on surveys studying particular segments of the population more in-depth should be among the agency's next priorities. However, the survey will be racially diverse and include participants of both sexes; the survey will strive to be inclusive, and respondents' characteristics will in part depend on consumers who participate in the survey.[30] Finally, the suggested topics and questions provided by NACA fall within the survey topic areas and may be addressed depending on experiences that participants may have encountered.

*National Automobile Dealers Association ("NADA"):* NADA raised questions about the purpose, necessity, and methodology of the survey. NADA stated that the Commission already conducted a broad examination of the same questions and developed a record that obviates the need for further examination of this matter, through its roundtable discussions and related comments received through May 2012. It also stated that the FTC does not cite complaint data or data from another source that supports the exercise, that the FTC requested data demonstrating that prevalent abuses exist in the auto industry but received none, and that the FTC overlooks credible quantitative surveys that have been conducted finding a high level of consumer satisfaction, which NADA references in its comment. NADA also provided comments on survey methodology, including asking how the Commission will control for respondent fatigue during the survey;[31] what questions will be asked of consumers and how the Commission will control for interviewer influence; how the Commission will be aided by anecdotal results; how it will control for limits of location research facilities; how it will control for survey respondent characteristics that may not be representative of the consumer population, and control for different attitudes and experiences over time; and whether it will include key analytical variables with only 40 respondents. It also asks about pre-set review criteria for documentation review, asks how the Commission will determine whether to go beyond the initial 40 consumers, and requests that the Commission make available the full methodological report or other written report, and identify additional stages that the Commission will conduct.

The FTC's work since 2011 demonstrates, rather than obviates, the need for further examination of consumer protection issues in the auto marketplace. During the 2011 roundtables, with comments through May 2012, participants raised various auto purchase and lease issues.[32] Since that time, the FTC has brought more than 25 auto dealer cases, many focusing on issues that became known in the roundtables, including misrepresentations in auto dealer advertisements about payments and rates; issues related to negative equity; add-ons; and many others.[33] Despite these public law enforcement actions, there has continued to be illegal conduct in the auto marketplace, often involving the same or similar conduct as the conduct challenged in prior actions.[34] This persistent conduct indicates that additional measures are necessary, including to study consumer experiences and help determine additional ways to protect consumers in auto transactions.

The proposed survey is expected to provide in-depth information about consumer protection issues that could be addressed through FTC initiatives, including enforcement, rulemaking, or education.[35] The survey will focus on

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[30] Depending on the consumers who participate, it is additionally possible that participants with Native American heritage and those with military backgrounds could be included. However, including non-English speakers in the survey would require translators to be available for many potential languages and dialects, for possible participants in the survey. This could vastly increase costs, and create delays during the survey, particularly if the needed translator was not present. Participation by non-English speakers is beyond the focus of the instant survey.

[31] NADA's comment misstates that the proposed survey is quantitative. *See* NADA comment at 5. The survey is qualitative.

[32] The roundtables transcripts and videos from all three forums are available at: *https://www.ftc.gov/news-events/press-releases/2012/02/ftc-continues-seek-public-input-consumer-issues-motor-vehicle;* public comments received in this matter are available at *https://www.ftc.gov/policy/public-comments/initiative-369.*

[33] As also noted in the prior 60-day **Federal Register** Notice, more information on FTC cases in the auto area is available at *https://www.ftc.gov/news-events/media-resources/consumer-finance/auto-marketplace.*

[34] For example, in 2012, the Commission settled charges that five dealerships made deceptive claims that they would pay off the remaining balance on consumers' trade-ins, no matter what they owed. According to the FTC's complaints, the dealers actually rolled the remaining balance (negative equity) into the customers' new car financing, or in one instance, required the consumer to pay it out-of-pocket. *See In the Matter of Billion Auto, Inc.,* Docket No. C–4356 (May 1, 2012), *available at https://www.ftc.gov/enforcement/cases-proceedings/112-3209/billion-auto-inc-matter; In the Matter of Frank Myers AutoMaxx, LLC,* Docket No. C–4353 (Apr. 19, 2012), *available at https://www.ftc.gov/enforcement/cases-proceedings/112-3206/frank-meyers-automaxx-llc-matter; In the Matter of Key Hyundai of Manchester, LLC, and Key Hyundai of Milford, LLC,* Docket Number C–3358 (May 4, 2012), *available at https://www.ftc.gov/enforcement/cases-proceedings/112-3204/key-hyundai-manchester-llc-hyundai-milford-llc-matter;* and *In the Matter of Ramey Motors, Inc.,* Docket No. C–4354 (Apr. 19, 2012), *available at https://www.ftc.gov/enforcement/cases-proceedings/112-3207/ramey-motors-inc-matter.* A few years later, the FTC settled charges that another dealer, among other things, promoted the sale and lease of its vehicles using an ad that claimed consumers could get out of their current loan or lease for $1, when in fact the dealer rolled the balance of the prior obligation into the new transaction. *See In the Matter of TXVT Limited Partnership,* Docket No. C–4508 (Feb. 12, 2015), *available at https://www.ftc.gov/enforcement/cases-proceedings/142-3117/txvt-limited-partnership-matter.* In 2013, the FTC settled charges that two auto dealers deceptively advertised the cost or available discounts for their vehicles. *See, e.g., In the Matter of Ganley Ford West, Inc.,* Docket No. C–4428 (Jan. 28, 2014), *available at https://www.ftc.gov/enforcement/cases-proceedings/1223269/ganley-ford-west-inc-matter,* and *In the Matter of Timonium Chrysler, Inc.,* Docket No. C–4429 (Jan. 28, 2014), *available at https://www.ftc.gov/enforcement/cases-proceedings/1323014/timonium-chrysler-inc-matter.* About a year later, the FTC settled charges that another dealer, among other things, misrepresented that specific discounts, rebates, incentives or prices were generally available to consumers, when in fact they were not. *See In the Matter of TT of Longwood, Inc.,* C–4431 (July 2, 2015), *available at https://www.ftc.gov/enforcement/cases-proceedings/152-3047/tt-longwood-inc-matter-cory-fairbanks-mazda.* The FTC has brought multiple other cases addressing deceptive practices by auto dealers. *See, e.g.,* FTC, Press Releases, *FTC Announces Sweep Against 10 Auto Dealers,* Jan. 9, 2014, *available at https://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers,* and *FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing,* Mar. 26, 2015, *available at https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown.*

[35] With respect to the studies that NADA referenced about generalized "customer satisfaction," the proposed survey neither is a duplicate of such a survey nor is it similarly focused. Instead, the proposed survey pertains to individual consumers' discussion of their experiences with the car purchase and financing process, including a walk-through of the consumer's related documents. This information to be gathered by the survey is also not necessarily something that is covered by complaints filed with the FTC—which last year numbered 93,917, making it our eighth most complained about category—because it encompasses a broader consideration of

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learning directly from consumers their specific experiences through the entire purchase and financing process, and will include a review of their documents, as opposed to hearing about more general experiences from the perspective of the auto industry, consumer advocates, and regulators, as the roundtables did.[36] While the latter stakeholders' perspectives are certainly important, it is also critical to hear from consumers themselves.

As the proposed survey is qualitative, the results will not be interpreted as quantitative measures of prevalence of practices. A qualitative survey facilitates an understanding of the nuances of consumer comprehension and thought-processes in the complex task of vehicle purchasing and financing. The proposed survey focuses expansively on consumers' experiences at the dealership in car purchasing and financing, and the interviewer will avoid suggesting particular problems. There is no indication that respondent fatigue will impede consumers in their ability to describe their own experiences, which they will do on a voluntary basis. Only consumers who purchased a car within the past six months will be involved, which is a recent timeframe. The Commission cannot state for now whether it would go beyond the initial 40 consumers in the survey, which may, in part, be contingent on the time required for that first segment. The FTC has not determined whether it will publish a report on the survey results. Finally, the information obtained by the FTC through the survey could support or be useful in various initiatives for this important area, such as enforcement, rulemaking, or education.

*American Financial Services Association* and *Consumer Bankers Association:* These groups supported the general professionalism of the FTC's work and its research staff. However, they expressed concern about possible bias, based on references about potentially "unfair or deceptive practices" in the January 7, 2016 Notice, and they noted that the FTC previously had three roundtables and "did not find any problems with the selling, financing, or leasing of motor vehicles." [37] The comment also expressed a preference for separating research from enforcement and for removing all identifying information about dealers and financiers from the survey. The comment stated that the survey size is too small, making an analysis for statistical trends impossible; inquired about the questions to be asked; expressed the need to avoid interviewer steering of respondents; and encouraged the survey to focus on third party financing at a bank or credit union. Finally, it provided various questions, including about: The reason for the project, additional phases of the project, issues for consideration, the purpose of the documents, the reason for diversity in the respondents, and how results of the project will be distributed.

The FTC is charged with enforcement of numerous statutes, as noted in the January 7, 2016 Notice, including protecting consumers against unfair or deceptive conduct, in violation of Section 5 of the FTC Act; this focus was also noted in the FTC's announcements regarding its auto roundtables.[38] The FTC has brought more than 25 enforcement actions, which specifically address such alleged conduct, as well as other alleged violations of federal laws and regulations related to automobile sales and financing. It is erroneous to state that the FTC has found no problems in this area; indeed, it has found many diverse problems affecting consumers at auto dealerships, and has been bringing enforcement actions repeatedly since that time to address them, as described in the prior Notice and as available at its Web site at *https://www.ftc.gov.*[39]

The purpose of the survey is to explore broadly consumers' experiences in the purchase and financing process of their automobiles; as indicated, no decision has been made about what initiatives would be appropriate as an outgrowth of the process because the survey itself has not occurred. As noted above, the survey is qualitative; therefore, its size or structure is not designed to be representative of the population. Steering of respondents will be avoided; the survey is broadly explorative of the auto buying and financing process and consumers' experiences at the dealership. Additional information about survey topics, including about the review of consumers' documents, appears above. The survey focuses on entities and activities over which the agency has jurisdiction, namely auto dealerships and their financing practices—not third party financing from banks (or federal credit unions) over which the FTC does not have jurisdiction.[40] The survey will be racially diverse and include participants from both sexes—as these various consumers may offer information about differing experiences at dealerships where consumers have purchased and financed vehicles.[41] The results of the study will be used to inform and provide insights to the FTC regarding consumer understanding of the automobile purchasing and financing process at the dealership. The FTC has not determined whether it will publish a report on this matter.

*National Independent Dealers Association ("NIADA"):* This organization stated that the survey's results will not be generalizable to the U.S. population, and thus it does not believe its costs are warranted. The comment stated that the survey was duplicative of the prior FTC roundtables. As noted above, the survey will be qualitative, and is not duplicative of prior roundtables because it focuses on consumers' individual experiences and the process of purchasing and financing automobiles

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the purchase and financing process and consumers' experiences. *See, e.g.,* FTC, *Consumer Sentinel Network Data Book for January-December, 2015* (Feb. 2016) at 6, *available at https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2015/160229csn-2015databook.pdf.*

[36] Staff also has now provided additional information regarding the topics to be discussed, as described above.

[37] AFSA–CBA Comment at 1.

[38] *See, e.g.,* FTC, Press Release, Third FTC Roundtable to Cover Motor Vehicle Leasing Issues, Review Sales, Financing and Leasing Issues from All of the Roundtables, and Discuss Possible Next Steps (Oct. 25, 2011) ("Dealer-arranged financing can be a complicated, opaque process and could potentially involve unfair or deceptive practices."), *available at https://www.ftc.gov/news-events/press-releases/2011/10/third-ftc-roundtable-cover-motor-vehicle-leasing-issues-review; see also* FTC, Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, 76 FR 14014 (Mar. 15, 2011), *available at https://www.gpo.gov/fdsys/pkg/FR-2011-03-15/pdf/2011-5873.pdf.*

[39] Indeed, these cases include two civil penalty matters filed in federal court against auto dealers that were previously charged by the FTC with violating Section 5 of the FTC Act by engaging in deceptive practices, among other things, and who—after entering into administrative orders with the Commission—were charged with violating those orders, again engaging in deceptive practices. *See* FTC, Press Releases, *FTC Takes Action Against Two Auto Dealership Chains For Violating 2012 Orders Prohibiting Deceptive Advertising of Vehicle Costs,* Dec. 12, 2014, *available at https://www.ftc.gov/news-events/press-releases/2014/12/ftc-takes-action-against-two-auto-dealership-chains-violating,* and *FTC Action: Auto Dealership Will Pay $80,000 Penalty for Violating 2012 order Prohibiting Deceptive Advertising of Vehicle Costs,* Sept. 18, 2015, *available at https://www.ftc.gov/news-events/press-releases/2015/09/ftc-action-auto-dealership-will-pay-80000-penalty-violating-2012.* The dealers paid $360,000 (Billion) and $80,000 (Ramey). *See id.*

[40] *See, e.g.,* 15 U.S.C. 45(a).

[41] The Commission generally does not expect to redact information from consumers' documents about the names and locations of dealerships. However, to the extent that individual consumers' or dealers' information such as account numbers, Social Security numbers, or Taxpayer ID numbers are contained on these documents, such information will be redacted from information provided to the FTC. The survey will utilize rigorous protections for privacy and security of consumer information.

at dealerships, including through a review of their documents. Thus, the survey will provide new information in this area, which involves a significant and costly financial transaction for most consumers. The FTC believes the information will be useful to the Commission, as it continues striving to address issues in the important area of auto purchases and financing at dealerships.

*Syracuse University School of Law Legal Clinic:* This comment provided information regarding problems affecting consumers in the auto financing area, and suggested that regulation in this area would protect consumers. It stated that dealers use high-pressure tactics to force people into vehicles they cannot afford, that some vehicles involve warranties and other costly additional items, and that dealers routinely falsify documents to finance the deals. The comment provided several examples of consumers who have experienced specific problems with auto dealerships. The FTC appreciates this information, as it is helpful to know about issues in the marketplace given that we are focused on protecting consumers in this area.

*Eleven Additional Individuals:*[42] Each of these comments raised specific problems that the individuals or consumers, or others for whom they provided the FTC information, had encountered with auto dealerships.[43] They described a variety of problems that the consumers experienced, including but not limited to: Changing offers at the dealership for financing after the consumer had responded to a specific ad; dealers that sold cars on terms beyond the consumers' circumstances or ability to pay; dealerships that convinced the consumer to accept dealer-financing that was later declined to be finalized; misrepresentations by dealers to sell vehicles; dealer financing of "back-end products" like warranties, GAP policies and wheel protection; and problems in used car sales and trade-ins. The FTC appreciates this information regarding specific issues consumers face in the auto buying marketplace because we are focused on protecting consumers in this area.

## IV. Request for Comment

Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, the Commission is providing this second opportunity for public comment. In addition to inviting comment on the practical utility of the proposed survey, accuracy of the FTC's associated PRA burden estimates, ways to enhance the information to be collected and to minimize burden, the FTC seeks comments on the proposed survey methodology and specific issues or questions that should be included in the interview process.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 14, 2016. Write "Auto Buyer Consumer Survey, Project No. P154800" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *https://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[44] Your comment will be kept confidential only if the FTC General Counsel or the General Counsel's designee grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/autobuyersurveypra2,* by following the instructions on the web-based form. When this Notice appears at *https://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you prefer to file your comment on paper, write "Auto Buyer Consumer Survey, Project No. P154800" on your comment and on the envelope and mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, they should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5806.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [30 days from **Federal Register** date of publication]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm.*

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[42] These comments are: Wilson #633–00017; Prohaska #633–00012; Burton #633–00010; Mandola #633–00008; Dawson #633–00009; Leech #633–00005; Aragon #633–00006; Johnson #633–00007; Sloan #633–00004; and Sutton #633–00002, *available at https://www.ftc.gov/policy/public-comments/initiative-633.*

[43] For example, one mother commented regarding the experience of her son who has learning disabilities, in connection with an auto dealership where he went to claim a "scratch-off prize" that he thought he had won in response to a flyer that he received in the mail. *See* Sloan #633–00004, *available https://www.ftc.gov/policy/public-comments/initiative-633.*

[44] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. 2016–22106 Filed 9–13–16; 8:45 am]

**BILLING CODE 6750–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH or Institute)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

*Times and Dates:* 8:00 a.m.–5:00 p.m., EDT, October 11, 2016 (Closed); 8:00 a.m.–5:00 p.m., EDT, October 12, 2016 (Closed).

*Place:* Embassy Suites, 1900 Diagonal Road, Alexandria, Virginia 22314, Telephone: 703–684–5900, Fax: 703–684–0653.

*Purpose:* The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health, and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals. This will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects, which will lead to improvements in the delivery of occupational safety and health services, and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

*Matters for Discussion:* The meeting will convene to address matters related to the conduct of Study Section business and for the study section to consider safety and occupational health-related grant applications.

These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to section 10(d) Public Law 92–463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Joanne Fairbanks, Designated Federal Officer, NIOSH, CDC, 1095 Willowdale Road, Morgantown, WV 26506, Mailstop L1119, Telephone: (304) 285–6143.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–22059 Filed 9–13–16; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

### Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Time and Date:* 11:00 a.m.–2:00 p.m., EDT, October 4, 2016.

*Place:* Audio Conference Call via FTS Conferencing.

*Status:* Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537, passcode 9933701.

*Background:* The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines, which have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on March 22, 2016 pursuant to Executive Order 13708, and will expire on September 30, 2017.

*Purpose:* This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters for Discussion:* The agenda for the conference call includes: Final Special Exposure Cohort (SEC) Petition Votes from August ABRWH Meeting for Blockson Chemical Co. (Joliet, Illinois) and Westinghouse Electric Co. (Bloomfield, New Jersey); Bliss and Laughlin Steel SEC Petition (Buffalo, New York), Work Group and Subcommittee Reports; SEC Petitions Update for the November 2016 Advisory Board Meeting; Plans for the November 2016 Advisory Board Meeting; and Advisory Board Correspondence.

*Contact Person for More Information:* Theodore M. Katz, M.P.A., Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop: E–20, Atlanta, Georgia 30333, Telephone (513)

533–6800, Toll Free 1–800–CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2016–22058 Filed 9–13–16; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–D–2635]**

### The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals; Establishing Appropriate Durations of Therapeutic Administration; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA, the Agency, we) is soliciting comments regarding the establishment of appropriately targeted durations of use of antimicrobial drugs of importance to human medicine (*i.e.,* medically important antimicrobial drugs) when they are administered in the feed or water of food-producing animals for therapeutic purposes. This activity is consistent with previous efforts by FDA to protect public health by promoting the judicious use of these drugs in food-producing animals.

**DATES:** Submit either electronic or written comments by December 13, 2016.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

*Instructions:* All submissions received must include the Docket No. FDA–2016–D–2635 for "Establishing Appropriate Durations of Therapeutic Administration." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Cindy Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0817, *cindy.burnsteel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 18, 2014, the President issued Executive Order 13676 on "Combating Antibiotic-Resistant Bacteria" (*https://www.gpo.gov/fdsys/pkg/FR-2014-09-23/pdf/2014-22805.pdf*), underscoring the urgent need to address the global threat of antimicrobial resistance. The National Action Plan for Combating Antibiotic-Resistant Bacteria (National Action Plan) (March 2015, *https://www.whitehouse.gov/sites/default/files/docs/national_action_plan_for_combating_antibotic-resistant_bacteria.pdf*) was developed in response to this Executive order, and presents a strategy for collaborative action by the U.S. Government in coordination with individuals and organizations within the human and animal health sectors. The plan establishes specific goals and objectives within a 5-year timeframe, outlines steps for implementing certain measures, and informs national policy development in order to combat the emergence of antimicrobial-resistant bacteria.

FDA is actively engaged in several ongoing efforts to address antimicrobial resistance originating from the use of antimicrobial drugs that are important in human medicine (medically important antimicrobials) in food-producing animals. These efforts have supported and continue to support the initiatives of the National Action Plan. Judicious use of medically important antimicrobials, which includes implementation of interventions (*e.g.*, good husbandry practices) that can reduce the spread of antimicrobial resistance, is the cornerstone of Goal 1 in the National Action Plan, to "Slow the Emergence of Resistant Bacteria and Prevent the Spread of Resistant Infections." FDA's approach to ensuring the judicious use of medically important antimicrobial drugs in food-producing animals has been presented in two Guidance for Industry (GFI) documents, GFI #209, "The Judicious Use of Medically Important Antimicrobial Drugs in Food-Producing Animals" [1] (GFI #209) and GFI #213, "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209" [2] (GFI #213).

GFI #209, published in April 2012, outlines FDA's fundamental principles of judicious use. These are: (1) Limiting medically important antimicrobial drugs to uses in food-producing animals that are considered necessary for assuring animal health and (2) limiting such drugs to uses that include veterinary oversight or consultation. In GFI #209, FDA stated that it generally considers uses that are associated with the treatment, control, or prevention of specific diseases to be uses that are necessary for assuring the health of food-producing animals, in contrast to uses for production purposes (*e.g.*, for growth promotion or improved feed efficiency) to enhance the production of animal-derived products.

As discussed in GFI #209, FDA's current methodology for assessing antimicrobial risks associated with the use of antimicrobial new animal drugs in food-producing animals is premised on the concept that increasing the exposure of bacterial populations to antimicrobial drugs increases the risk of generating resistance to those antimicrobial drugs. Because feed or water use antimicrobial drugs are typically administered to entire herds or flocks of food-producing animals, such uses pose higher risk to public health than the administration of such drugs to individual animals or targeted groups of animals, as is done with dosage form drugs (*e.g.*, injectables, tablets, etc.). Therefore, FDA is more concerned with medically important antimicrobial new animal drugs and combination new animal drug products intended for use in feed or water of food-producing animals.

GFI #213, published in December 2013, is based on the two fundamental principles of judicious use described in GFI #209 and provides specific recommendations for drug sponsors. These recommendations for sponsors of approved medically important antimicrobial drugs administered in feed or water to food-producing animals include: (1) Removing production indications [3] (*e.g.*, increased rate of weight gain and improved feed efficiency) and (2) incorporating veterinary oversight for the remaining therapeutic indications.

FDA is working collaboratively with the sponsors of affected applications to facilitate the revision of product labeling to reflect the voluntary withdrawal of approval of production indications. Incorporating veterinary oversight is accomplished by changing the marketing status from over-the-counter (OTC) use to use by either veterinary feed directive (VFD), in the case of drugs administered in feed, or by veterinary prescription (Rx), in the case of drugs administered in water.

In Section III of GFI #213, FDA states, "all antimicrobial drugs listed in Appendix A to GFI #152 [4] (Appendix A) [are considered] to be 'medically important' in the context of implementing the recommendations outlined in GFI #209 and further discussed in this guidance document (GFI #213). We believe that the policy in GFI #209 and GFI #213 applies to all three tiers ["critically important," "highly important," or "important"] of medically important antimicrobial drugs at this time because each tier (and thus all of the drugs listed in Appendix A) contains drugs that have been previously assessed through the public processes used to develop GFI #152 and determined to be important for treating bacterial infections in people. . . . The current list of medically important antimicrobial drug classes that are the subject of this guidance includes: Aminoglycosides, lincosamides, macrolides, penicillins, streptogramins, sulfonamides, and tetracyclines."

The implementation of GFI #213 is a critical step toward improving judicious use in veterinary practice, thereby minimizing the selection of antimicrobial-resistant microorganisms to help preserve the therapeutic effectiveness of medically important antimicrobial drugs. As stated previously, incorporating veterinary oversight is accomplished by changing the existing OTC marketing status of these drugs to either VFD marketing status, in the case of drugs administered in feed, or to veterinary Rx status, in the case of drugs administered in water. In GFI #213 and outreach related to the 2015 revisions made to the VFD regulations (*http://www.fda.gov/AnimalVeterinary/DevelopmentApprovalProcess/ucm449019.htm*), FDA has stated that, in addition to veterinary oversight, use of these antimicrobials should be linked to a specific etiologic agent and that the antimicrobial should be administered for an appropriately targeted period of time, *i.e.*, have a defined duration of use.

As explained in GFI #213, we expect, among other things, that any new indications for medically important antimicrobials, including those used in feed or in drinking water, have defined durations of use. Consistent with this expectation, the recently revised VFD regulations in 21 CFR part 558 state that a lawful VFD, among other requirements, must document the duration of use of the VFD drug contained in the medicated feed (see 21 CFR 558.6(b)(3)(x)).

Although GFI #213 sets out our expectation that new indications of medically important antimicrobial drugs used in or on feed and water will have defined durations of use, it does not address what to do with respect to some currently approved therapeutics that lack defined durations of use. Establishing defined durations of use for currently approved therapeutics will support FDA's efforts to foster stewardship of medically important antimicrobial drugs in food-producing animals and help preserve the effectiveness of these antimicrobials in animal and human medicine. Some examples of defined durations of use on the labeling of currently approved therapeutics are "Feed continuously for 5 days," "Feed continuously for 5 days as the sole ration," "Feed from weaning up to 120 pounds," and "Do not feed to chickens over 16 weeks (112 days) of age."

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[1] *http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM216936.pdf.*

[2] *http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf.*

[3] Production uses are also referred to as "nontherapeutic" or "subtherapeutic" uses, terms that we believe lack sufficient clarity (GFI #209).

[4] GFI #152, "Evaluating the Safety of Antimicrobial New Animal Drugs with Regard to their Microbiological Effects on Bacteria of Human Health Concern." (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM052519.pdf*).

In section II, FDA invites comment on the establishment of appropriately targeted durations of use of medically important antimicrobial drugs administered to food-producing animals in feed or water for those therapeutics for which a defined durations of use is not included on currently approved labeling. Along with labeling that is silent on limits to the duration of use, some examples in which the duration of use is not defined on currently approved labeling are "Feed continuously" and "Feed continuously as the sole ration."

FDA will consider submitted comments as we develop a process by which sponsors of currently approved, medically important antimicrobial drugs, administered in feed or water to food-producing animals for therapeutic purposes, could establish appropriately targeted durations of use. We recognize that, in certain circumstances, some medically important antimicrobial drugs may have a range of safe and effective durations (see 21 CFR 514.4(b)(2)(i)). Approval of defined durations of use may be supported by existing effectiveness data, target animal safety data, human food safety studies, clinical pharmacology studies, disease pathophysiology, and/or other available information.

Based on an April 2016 review, FDA identified six species (cattle, swine, chickens, turkeys, sheep, and honey bees) for which there are approved, medically important antimicrobials administered in medicated feed or drinking water for therapeutic purposes that do not currently have a defined duration of use included on labeling. We have summarized, in tabular form, the species and disease indications for which these drugs are approved without defined durations of use (see tables 1 through 6). Indications are summarized as disease conditions (see column entitled "Indication/Disease") and are listed with their associated antimicrobial drugs (see column titled "Ingredient(s)"). These tables may assist members of the public who wish to comment on establishing appropriately targeted durations of use.

## II. Issues for Consideration

A key objective of FDA is to optimize the use of medically important antimicrobials by using a dosage strategy that maximizes drug effectiveness, minimizes target animal toxicity, and has an appropriately targeted duration of use to minimize the development of resistance to antimicrobial drugs of human medical importance. FDA invites comments on the questions below to assist in evaluating appropriately targeted durations of use for medically important antimicrobial drugs administered to food-producing animals in or on feed or in drinking water for those therapeutics for which a defined duration of use is not included on the currently approved labeling.

For the species and disease indications listed in tables 1 through 6, this request for comments is intended to: (1) Obtain additional information, especially from the animal agriculture, animal health, and veterinary communities, on the underlying diseases for these therapeutic indications, including periods when livestock or poultry are at risk of developing these diseases; (2) seek input on more-targeted antimicrobial use regimens for these diseases, and husbandry practices that may help avoid the need for these antimicrobials, or that may help make more-targeted antimicrobial use regimens more effective; and (3) seek comment on strategies for updating affected product labeling, as appropriate, that does not currently include a defined duration of use.

When commenting on an appropriately targeted duration of use for a medicated feed for use in a food-producing major species, please consider the target animal classes described in Appendix III of GFI #191, "Changes to Approved NADAs—New ANDAs vs Category II Supplemental NADAs," [5] and the periods when that class of animal is at risk of developing that disease. For the diseases/indications and antimicrobials listed in tables 1 through 6 for which the duration of use is undefined on labeling, please address the following questions based on your current practices:

1. When is the animal/class at risk of developing the disease?
2. For how long do you administer X antimicrobial for Y indication if the labeling says "feed continuously," or is silent on duration of use?
3. What factors influence your decision when determining the duration of use?
4. In addition to the drug labeling, what sources of information do you use in making a decision regarding duration of use?
   a. Past personal experience;
   b. drug industry representatives;
   c. extension agents;
   d. producer or veterinary medicine magazines;
   e. online resources;
   f. formularies; and
   g. other.
5. What pros and cons do you see if durations of use are defined for all of these antimicrobials?
6. What reasonable alternatives to medically important antimicrobials, including other pharmaceutical or non-pharmaceutical approaches, are available for managing the diseases listed in tables 1 through 6?

In the following tables, undefined durations of use means, for example, therapeutics that include the statement "feed continuously," "feed continuously as the sole ration" or other similar language on their labeling, or that have labeling that is silent on limits to the duration of use. *Ingredient(s)* means a medically important antimicrobial ingredient and any feed use combination approvals including that ingredient. When more than one ingredient is listed, that drug combination is only available in a fixed-ratio, combination drug Type A medicated article for use in complete Type C medicated feeds.

TABLE 1—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN CATTLE

| Indication/disease | Ingredient(s) |
|---|---|
| Anaplasmosis | Chlortetracycline. |
| Bacterial enteritis | Chlortetracycline.<br>Oxytetracycline. |

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[5] *http://www.fda.gov/downloads/animalveterinary/guidancecomplianceenforcement/guidanceforindustry/ucm052460.*

TABLE 1—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN CATTLE—Continued

| Indication/disease | Ingredient(s) |
|---|---|
| Liver Abscesses | Chlortetracycline.<br>Tylosin.<br>Oxytetracycline.<br>Neomycin With Oxytetracycline.<br>Virginiamycin. |
| Pneumonia | Chlortetracycline. |

TABLE 2—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN SWINE

| Indication/disease | Ingredient(s) |
|---|---|
| Atrophic rhinitis | Tylosin.<br>Tylosin With Sulfamethazine.<br>Chlortetracycline.<br>Sulfamethazine. |
| Pneumonia | Tylosin With Sulfamethazine.<br>Oxytetracycline. |
| GI-Parasites[1] | Hygromycin B. |
| GI-Bacterial[2] | Tylosin With Sulfamethazine.<br>Lincomycin.<br>Chlortetracycline With Sulfamethazine.<br>Chlortetracycline.<br>Oxytetracycline. |
| Jowl abscesses | Chlortetracycline. |

[1] An example of Gastrointestinal (GI)-Parasite indication is "Control of infestations of large roundworms (*Ascaris suis*), nodular worms (*Oesophagostomum dentatum*), and whipworms (*Trichuris suis*)."

[2] Examples of Gastrointestinal (GI)-Bacterial indications are: "For treatment of swine dysentery"; "To help prevent bacterial swine enteritis"; and "Treatment of bacterial swine enteritis (salmonellosis or necrotic enteritis caused by *Salmonella choleraesuis* and vibrionic dysentery)."

TABLE 3—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN CHICKENS

| Indication/disease | Ingredient(s) |
|---|---|
| Infectious Coryza | Ormetoprim with Sulfadimethoxine. |
| Chronic Respiratory Disease | Oxytetracycline.<br>Oxytetracycline. |
| Necrotic Enteritis/Colibacillosis | Ormetoprim with Sulfadimethoxine.<br>Lincomycin.<br>Virginiamycin. |
| Fowl Cholera | Ormetoprim with Sulfadimethoxine. |
| Gastrointestinal (GI)-Parasites[1] | Hygromycin B. |
| Coccidiosis | Ormetoprim with Sulfadimethoxine. |

[1] An example of Gastrointestinal (GI)-Parasite indication is, "As an aid in the control of infections of large roundworms (*Ascaris galli*), cecal worms (*Heterakis gallinae*), and capillary worms (*Capillaria obsignata*)."

TABLE 4—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN TURKEYS

| Indication/disease | Ingredient(s) |
|---|---|
| Coccidiosis | Ormetoprim with Sulfadimethoxine. |
| Fowl Cholera | Ormetoprim with Sulfadimethoxine. |

TABLE 5—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN SHEEP

| Indication/disease | Ingredient(s) |
|---|---|
| Vibrionic Abortion | Chlortetracycline. |
| Enterotoxemia | Chlortetracycline. |

TABLE 6—ANTIMICROBIALS WITH APPROVED THERAPEUTIC (TREATMENT/CONTROL/PREVENTION) INDICATIONS WITH UNDEFINED DURATIONS OF USE IN HONEY BEES

| Indication/disease | Ingredient(s) |
|---|---|
| Foulbrood | Oxytetracycline. |

Dated: September 7, 2016.

**Leslie Kux,**

*Associate Commissioner for Policy.*

[FR Doc. 2016–21972 Filed 9–12–16; 11:15 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–0002]**

### Withdrawal of Approval of Part of a New Animal Drug Application; Chlortetracycline, Procaine Penicillin, and Sulfamethazine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of withdrawal of approval.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of those parts of a new animal drug application (NADA) for a 3-way, fixed-ratio, combination drug Type A medicated article that pertain to use of the procaine penicillin component for production indications in swine. This action is being taken at the sponsor's request because the 3-way Type A medicated article is no longer manufactured.

**DATES:** Withdrawal of approval is effective September 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0817, *cindy.burnsteel@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Pharmgate LLC (Pharmgate), 1015 Ashes Dr., Suite 102, Wilmington, NC 28405 has requested that FDA withdraw approval of those parts of NADA 138–934 for PENNCHLOR SP 500 (chlortetracycline, procaine penicillin, and sulfamethazine) Type A medicated article that pertain to use of the procaine penicillin component for the production indications of growth promotion and increased feed efficiency in swine. Pharmgate requested voluntary withdrawal of approval of these indications for use because PENNCHLOR SP 500 Type A medicated article is no longer manufactured.

Therefore, under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Veterinary Medicine, and in accordance with § 514.116 *Notice of withdrawal of approval of application* (21 CFR 514.116), notice is given that approval of those parts of NADA 138–934 that pertain to use of procaine penicillin for the production indications of growth promotion and increased feed efficiency in swine are hereby withdrawn, effective September 14, 2016.

NADA 138–934 was identified as being affected by guidance for industry (GFI) #213 "New Animal Drugs and New Animal Drug Combination Products Administered in or on Medicated Feed or Drinking Water of Food-Producing Animals: Recommendations for Drug Sponsors for Voluntarily Aligning Product Use Conditions with GFI #209," December 2013.

Elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these parts of NADA 138–934.

Dated: September 6, 2016.

**William T. Flynn,**

*Acting Director, Center for Veterinary Medicine.*

[FR Doc. 2016–21984 Filed 9–13–16; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–0001]**

### Vaccines and Related Biological Products Advisory Committee; Cancellation

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The meeting of the Vaccines and Related Biological Products Advisory Committee scheduled for November 16, 2016, is cancelled. This meeting was announced in the **Federal Register** of August 30, 2016 (81 FR 59634).

**FOR FURTHER INFORMATION CONTACT:** Sujata Vijh, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, 240–402–7107, *sujata.vijh@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting.

Dated: September 8, 2016.

**Janice M. Soreth,**

*Acting Associate Commissioner, Special Medical Programs.*

[FR Doc. 2016–22051 Filed 9–13–16; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

**[Document Identifier: HHS–OS–0990–0324–60D]**

### Agency Information Collection Activities; Proposed Collection; Public Comment Request

**AGENCY:** Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for reinstatement with change of a previously-approved information collection assigned OMB control number 0990–0324, which expired on 03/31/2011. Prior to submitting the ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on the ICR must be received on or before October 14, 2016.

**ADDRESSES:** Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–5683.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the document identifier HHS–OS–0990–0324–60D for reference.

*Information Collection Request Title:* The Commissioned Corps of the U.S. Public Health Service Application-Medical Forms.

*Abstract:* The principal purpose for collecting the information is to permit HHS to determine eligibility for appointment of applicants into the Commissioned Corps of the U.S. Public Health Service (Corps). The Corps is one of the seven Uniformed Services of the United States (37 U.S.C. 101(3)), and appointments in the Corps are made pursuant to 42 U.S.C. 204 *et seq.* and 42 CFR 21.58. The application consists of PHS Medical forms noted below.

*Likely Respondents:* Candidates/Applicants to the Commissioned Corps.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

| Form No. | Number of respondents | Response per respondent | Average burden per response | Total burden hours |
|---|---|---|---|---|
| PHS–6355 | 1,000 | 1 | 1/60 | 1,000 |
| PHS–6379 | 4,000 | 1 | 1/60 | 1,000 |
| PHS–7053 | 800 | 1 | 6/60 | 80 |
| PHS–7054 | 1,320 | 1 | 6/60 | 132 |
| PHS–7055 | 2,800 | 1 | 7/60 | 327 |
| PHS–7056 | 1,600 | 1 | 7/60 | 187 |
| PHS–7057 | 600 | 1 | 5/60 | 50 |
| PHS–7061 | 2,000 | 1 | 10/60 | 333 |
| Total | | | | 3,109 |

OS specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Terry S. Clark,**

*Asst. Information Collection Clearance Officer.*

[FR Doc. 2016–22081 Filed 9–13–16; 8:45 am]

**BILLING CODE 4150–49–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

*Date:* October 23–25, 2016.

*Time:* 6:00 p.m. to 11:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 7, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22023 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Alzheimer's Prevention Initiative.

*Date:* September 29, 2016.

*Time:* 8:00 p.m. to 8:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jeannette L. Johnson, Ph.D., National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 8, 2016.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22021 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Human Genome Research Institute Initial Review Group; Genome Research Review Committee, GNOM–G CEGS.

*Date:* November 15–16, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Lakeside Ballroom, Washingtonian Blvd., Gaithersburg, MD 20878.

*Contact Person:* Rudy Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, (301) 402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 7, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22024 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA Research Education Program for Clinical Researchers and Clinicians (R25).

*Date:* October 6, 2016.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

*Contact Person:* Hiromi Ono, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 4238, MSC 9550, Bethesda, MD 20892, (301) 827–5820, *hiromi.ono@nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Cutting-Edge Basic Research Awards (CEBRA) (R21).

*Date:* October 25–26, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

*Contact Person:* Jose F. Ruiz, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, NIH, Room 4228, MSC 9550, 6001 Executive Blvd., Bethesda, MD 20892–9550, (301) 301–827–5842, *ruizjf@nida.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

*Date:* October 26, 2016.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov.*

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; NIDA Mentored Clinical Scientists Development Program Award in Drug Abuse and Addiction (K12).

*Date:* October 26, 2016.

*Time:* 3:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: September 8, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22020 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Fellowship Training Grants.

*Date:* October 4, 2016.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Yujing Liu, MD, Ph.D., Chief, Office of Review, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

*Name of Committee:* National Institute of Nursing Research Initial Review Group.

*Date:* October 18–19, 2016.

*Time:* 8:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Weiqun Li, MD, Scientific Review Officer, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Institutional Research Training Grants.

*Date:* October 19, 2016.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Mario Rinaudo, MD, Scientific Review Officer, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 703, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

*Name of Committee:* National Institute of Nursing Research Special Emphasis Panel; Fellowship Applications.

*Date:* October 26, 2016.

*Time:* 11:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Yujing Liu, MD, Ph.D., Chief, Office of Review, Office of Review, Division of Extramural Activities, National Institute of Nursing Research, National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 710, Bethesda, MD 20892, (301) 451–5152, *yujing_liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 7, 2016.

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22022 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

*Date:* October 6–7, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Virtual Meeting).

*Contact Person:* Frank S. De Silva, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3E72A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9834, Bethesda, MD 20892934, (240) 669–5023, *fdesilva@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 8, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22019 Filed 9–13–16; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Immunology Integrated Review Group; Hypersensitivity, Autoimmune, and Immune-mediated Diseases Study Section.

*Date:* October 6–7, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pentagon City Residence Inn,550 Army Navy Drive, Arlington, VA 22202.

*Contact Person:* Bahiru Gametchu, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–408–9329, *gametchb@csr.nih.gov.*

*Name of Committee:* Bioengineering Sciences & Technologies Integrated Review Group; Biomaterials and Biointerfaces Study Section.

*Date:* October 13–14, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaylord National Resort and Convention Center, 201 Waterfront Street, National Harbor, MD 20745.

*Contact Person:* Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 408–9465, *moscajos@csr.nih.gov.*

*Name of Committee:* Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.

*Date:* October 13–14, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005.

*Contact Person:* Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Synapses, Cytoskeleton and Trafficking Study Section.

*Date:* October 13–14, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

*Contact Person:* Christine A. Piggee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7850, Bethesda, MD 20892, 301–435–0657, *christine.piggee@nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Computational, Modeling, and Biodata Management.

*Date:* October 13, 2016.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

*Contact Person:* Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, *allen.richon@nih.hhs.gov.*

*Name of Committee:* Oncology 1—Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

*Date:* October 13–14, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

*Contact Person:* Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

*Date:* October 13, 2016.

*Time:* 8:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Westin Crystal City, 1800 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Molecular Genetics A Study Section.

*Date:* October 13–14, 2016.

*Time:* 8:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance M Street Hotel, 1143 New Hampshire Avenue NW., Washington, DC 20037.

*Contact Person:* Michael M. Sveda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1114, MSC 7890, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Integrative Nutrition and Metabolic Processes.

*Date:* October 13, 2016.

*Time:* 1:00 p.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Enabling Bioanalytical and Imaging Technologies.

*Date:* October 13, 2016.

*Time:* 2:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Vonda K. Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 8, 2016.

**Carolyn Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22018 Filed 9–13–16; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Minority Health and Health Disparities Special Emphasis Panel—NIH Support for Conferences and Scientific Meetings and NIH Pathway to Independence Award.

*Date:* October 17, 2016.

*Time:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20852.

*Contact Person:* Deborah Ismond, Ph.D., Scientific Review Officer, Division of Scientific Programs, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 402–1366, *ismonddr@mail.nih.gov.*

Dated: September 7, 2016.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–22036 Filed 9–13–16; 8:45 am]

BILLING CODE 4140–01–P

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5921–N–15]**

### Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Department of Homeland Security, Federal Emergency Management Agency (DHS/FEMA)

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice of a Computer Matching Program Between HUD and DHS/FEMA.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989); and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," HUD is issuing a public notice of its intent to conduct a recurring computer matching program with DHS/FEMA.

The purpose of this CMA is to ensure that eligible housing assistance applicants do not receive a duplication of housing benefits from both DHS/FEMA and HUD, as required by section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, and as may be required by statutes making available supplemental appropriations for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended (CDBG–DR Appropriations Acts), and by the notices published in the **Federal Register** that govern these CDBG–DR Appropriations Acts, including the *Clarification of Duplication of Benefits Requirements Under the Stafford Act for Community Development Block Grant (CDBG) Disaster Recovery Grantees* at 76 FR 71060 (Nov. 16, 2011).

**DATES:** *Effective Date:* The effective date of the matching program shall begin October 14, 2016, or at least 40 days from the date that copies of the Computer Matching Agreement, signed by both HUD and DHS/FEMA Data Integrity Boards (DIBs), are sent to OMB and Congress, whichever is later, provided that no comments that would result in a contrary determination are received.

*Comments Due Date:* October 14, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, Room 10110, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8:00 a.m. and 5:00 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Contact the "Recipient/Source Agency" Helen Goff Foster, Departmental Privacy Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number (202) 402–6147 or the "Recipient/Source Agency" Tammi Hines, Acting Privacy Director, DHS/FEMA, 500 C Street SW., Washington, DC 20479, telephone number (202) 212–5100. [These are not a toll-free numbers.] A telecommunication device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Relay Service).

**SUPPLEMENTARY INFORMATION:** The Computer Matching program seeks to ensure that applicants for HUD Housing Assistance and DHS/FEMA Individuals and Households Program, which provides Other Needs Assistance (ONA) and Housing Assistance (HA), do not receive a duplication of housing benefits. This will be accomplished by matching specific DHS/FEMA disaster applicant data with HUD Inventory Management System/PIH Information Center (IMS/PIC) tenant data, Enterprise Income Verification (EIV) tenant data and Tenant Rental Assistance Certification System (TRACS) data that HUD is authorized to collect for its rental housing assistance programs. DHS/FEMA will provide a database with Disaster Recovery Assistance (DRA) records, which only include the necessary data elements needed for the matching. HUD will provide Household Member data from the EIV, IMS/PIC, and TRACS databases. DHS/FEMA and HUD will exchange data, defined in the Interface Control Document, using secured web services and with all matching conducted internally.

## Reporting of Matching Program

In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988 as amended, and OMB Bulletin 89–22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public," copies of this notice and report are being provided to the U.S. House Committee on Oversight and Government Reform, the U.S. Senate Homeland Security and Governmental Affairs Committee, and OMB.

## Authority

*Purpose.* This computer matching agreement, hereinafter referred to as "agreement" governs a matching program between the Department of Homeland Security/Federal Emergency Management Agency and the Department of Housing and Urban Development. The purpose of the matching program is to:

(1) Establish or verify initial or continuing eligibility for DHS/FEMA disaster assistance programs;

(2) Verify compliance with the statutory or regulatory program requirements; and

(3) Recoup payments or delinquent debts under a herein identified program. Specifically, DHS/FEMA and HUD seek to ensure that individuals do not receive duplicate or erroneous disaster assistance for the same disaster or emergency and/or housing benefits from either agency.

*Legal Authority.* This agreement is executed in compliance with the Privacy Act of 1974 (5 U.S.C. 552a, as amended) and the statutes, regulations, notices and guidance promulgated thereunder.

A. The Robert T. Stafford Disaster and Emergency Assistance Act (Pub. L. 93–288), as amended at 42 U.S.C. 5121 *et seq.*, requires each federal agency that administers any program that provides financial assistance as a result of a major disaster or emergency, to assure that no individual or entity receives duplicate financial assistance under any program or insurance, or any other source. Furthermore, the Act requires DHS/FEMA or HUD (whichever agency provided the duplicate assistance) to recover all amounts from the recipient of the financial assistance (42 U.S.C. 5155).

B. Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174(i), as amended), DHS/FEMA is directed and authorized to "develop a system, including an electronic database", to:

1. Verify the identity and address of recipients of assistance to provide reasonable assurance that payments are made only to an individual or household that is eligible for such assistance;
2. Minimize the risk of making duplicative payments or payments for fraudulent claims;
3. Collect any duplicate payment on a claim, or reduce the amount of subsequent payments to offset the amount of any such duplicate payment;
4. Provide instructions to recipients of assistance regarding the proper use of any such assistance, regardless of how such assistance is distributed; and
5. Conduct an expedited and simplified review and appeal process for an individual or household whose application for assistance is denied

C. DHS/FEMA is authorized to provide States (impacted by disasters), in which the individuals and households are located, with access to the electronic records of individuals and households receiving assistance in order for the States to make available any additional State and local assistance to the individuals and households (42 U.S.C. 5174(f)(2).

D. Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3325(d) and 31 U.S.C. 7701(c)(1)), federal agencies are required to collect the taxpayer identification number of each person who receives payments from the federal government; and each person doing business with the federal government is required to furnish his or her taxpayer's identification number.

1. For the purposes of 31 U.S.C. 7701, a person is considered to be doing with business with the federal government if the person is

i. A lender or services in a federal guaranteed or insured loan program administered by a federal agency;

ii. An applicant for, or recipient of, a federal license permit, right-of-way, grant or benefit payment administered by a federal agency;

iii. A contractor of a federal agency;

iv. Assessed a fine, fee, royalty or penalty by a federal agency;

v. In a relationship with a federal agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a federal direct or insured loan administered by the federal agency.

Each federal agency must inform each person required to disclose his or her taxpayer identification number the agency's intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such person's relationship with the federal government.

E. Fraud, waste, and abuse prevention efforts pursuant to the aforementioned statutory authorities are also applicable to pilot programs designed to provide alternative or additional federal disaster assistance programs (6 U.S.C. 776–777).

F. Pursuant to section 239 of Public Law 111–8, Omnibus Appropriations Act, 2009 (123 Stat. 981, March 11, 2009), the Disaster Housing Assistance Programs administered by HUD are considered a HUD program under section 904 of the McKinney Act for the purpose of income verification and matching.

G. HUD's *Routine Use Inventory* notice published in the **Federal Register** on December 31, 2015 (80 FR 81837) provides individuals with notice of HUD's intended use of information contained within the following system of records:

1. Inventory Management Systems (IMS), also known as the Public and Indian Housing Information Center (PIC), HUD/PIH.01 (77 FR 22337, April 13, 2012).

2. Enterprise Income Verification (EIV), HUD/PIH–5 (74 FR 45235, September 1, 2009).

3. Tenant Housing Assistance and Contract Verification Data, also known as the Tenant Rental Assistance Certification System (TRACS), HUD/H–11 (62 FR 11909, March 13, 1997).

Specifically, pursuant to routine use 6 (within HUD's *Routine Use Inventory* notice (80 FR 81837)), HUD may disclose records contained in the aforementioned systems of records for the purpose of preventing fraud, waste and abuse within any federal program. HUD may disclose records to federal agencies, non-federal entities, their employees, and agents (including contractors, their agents or employees; employees or contractors of the agents or designated agents); or contractors, their employees or agents with whom HUD has a contract, service agreement for the purpose of:

(1) Detection, prevention, and recovery of improper payments;

(2) Detection and prevention of fraud, waste, and abuse in major federal programs administered by a federal agency or non-federal entity;

(3) Detection of fraud, waste, and abuse by individuals in their operations and programs, but only to the extent that the information shared is necessary and relevant to verify pre-award and prepayment requirements prior to the release of federal funds, prevent and recover improper payments for services rendered under programs of HUD or of those federal agencies and non-federal entities to which HUD provides information under this routine use.

H. HUD regulations (24 CFR 982.352(c) prohibits a family from receiving the benefit of tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

1. Public or Indian housing assistance;

2. Other Section 8 assistance (including other tenant-based assistance);

3. Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);

4. Section 101 rent supplements;

5. Section 236 rental assistance payments;

6. Tenant-based assistance under the HOME program;

7. Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);

8. Any local or state rent subsidy;

9. Section 202 supportive housing for the elderly;

10. Section 811 supportive housing for persons with disabilities;

11. Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

12. Any other duplicative federal, state, or local housing subsidy, as determined by HUD. For this purpose, "housing subsidy" does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

I. The following programs are covered under this computer matching agreement:

1. DHS/FEMA housing assistance provided through its Individuals and Households Program (IHP) as defined in Section III.

2. HUD rental assistance programs identified at 24 CFR 5.233 and the Disaster Housing Assistance Program.

### Objectives To Be Met by the Matching Program

The objective of this CMA is to ensure that eligible housing assistance applicants do not receive a duplication of housing benefits from DHS/FEMA and HUD.

### Description of the Match

An active survivor completes a FEMA assistance registration after a disaster. The NEMIS database stores data provided by the disaster victim on a FEMA 90–69 online form. FEMA processes the registration. During the FEMA processing period, the registration status will change status to 'VR' (Valid Registration) in NEMIS. This means that the registration has been processed through the data completeness and identity verification. The FEMA registration data is sent to HUD for initial verification via a secure web service. HUD will match the IA/IHP data elements to its EIV, IMS/PIC, and TRACS data. There are two scenarios for the HUD match process. The scenarios are:

1. Positive HUD match—HUD finds a match in their respective system for the DHS/FEMA data provided:

a. If a record submitted by DHS/FEMA to HUD results in a match by HUD, DHS/FEMA becomes a recipient of HUD Housing Assistance information;

b. DHS/FEMA will use the information it receives from HUD to independently evaluate and determine its applicants' eligibility for its housing programs under 42 U.S.C. 5174(c)(1);

c. DHS/FEMA will compare the HUD data with the FEMA registration data using the survivor's social security number and unique registration ID. The comparison process will be an automated process in NEMIS. The IA program will also be able to manually verify the comparison results using database queries. The registration ID is required to ensure the FEMA and HUD data can be aggregated in NEMIS as it is a unique primary key for the separate data sets;

d. Once DHS/FEMA confirms that match, the complete data set for the potential duplication of housing benefits is sent to FEMA's Program Review process for manual evaluation of any duplication of benefits. If FEMA review staff determines that there is a duplication of benefits, the duplicated amount is deducted from the eligible award. FEMA applicants receive a letter that indicates the amount of their eligible award and their ability to appeal.

2. No HUD match—HUD does not find a match in their respective system for the DHS/FEMA data provided:

a. If the initial verification record submitted by DHS/FEMA to HUD does not result in a match by HUD, DHS/FEMA becomes the source agency and sends additional FEMA Head of Household IA/IHP data to HUD to assist HUD in the future if those same applicants apply for HUD benefits. This additional information will aid HUD in making an appropriate determination as to whether the applicant qualifies or not for assistance under the various HUD programs if they have or have not received benefits from FEMA, since HUD does not have access to FEMA systems, and thus eliminate the need for future data requests of the same data. The additional data is not part of the initial verification process;

b. The FEMA–HUD data exchange process is complete and the transmission is terminated;

c. As part of the Duplication of Housing Benefits effort, HUD may share FEMA data via a secure web-service with state and local CDBG grantees with whom HUD has an existing ISAA as per the Privacy Statement 9420.1 Appendix B/C. CDBG grantees can be municipalities as well as individuals that receive federal money to assist low to mid-level income families with a variety of assistance. In order to avoid duplication of benefits between HUD/FEMA and the individual CDBG grantee, the information may need to be shared from HUD to state and local municipalities;

d. If the State and Local grantees require targeted data from FEMA which is not part of routine use or part of the Duplication of Housing Benefits effort, FEMA and the respective entity will need to engage in ISAA documentation. Once the ISAA is approved, the data sharing mechanism will determine if a CMA is needed between FEMA and the respective entity *i.e.* automated system vs. manual data delivery.

## Records To Be Matched

### *HUD*

The HUD records shared as part of this matching program reside in HUD's EIV, IMS/PIC, and TRACS systems, which include data from the IMS/PIC the HUD/PIH–5 system of record, 74 FR 45,235 (Sep. 1, 2009); and the HUD/H–11 system of records, 62 FR 11,909 (Mar. 13, 1997).

### *DHS/FEMA*

The DHS/FEMA records shared as part of this CMA resides in DHS/FEMA's Disaster Recovery Assistance Files system of records, as provided by the DHS/FEMA—008 SORN, 74 FR 25,282 (April 30, 2013); through its National Emergency Management Information System—Individual Assistance (NEMIS–IA).

## Notice Procedures

The Privacy Act requires Agreements to specify procedures for notifying applicants/recipients at time of registration and other periodic notice as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of OMB pursuant to subsection (v)) to applicants for and recipients of financial assistance or payments under Federal benefit programs.

DHS/FEMA and HUD have both published system of records notices informing applicants/recipients that their information may be subject to verification through matching programs per 5 U.S.C. 552a(o)(1)(D). As further required by the Privacy Act, DHS/FEMA and HUD shall make a copy of the Computer Matching Agreement available to the public upon request.

## DHS/FEMA Recipients

DHS/FEMA Form 009–0–1 "Paper Application/Disaster Assistance Registration," DHS/FEMA Form 009–0–3, "Declaration and Release" (both contained in OMB ICR No. 1660–0002), and various other forms used for financial assistance benefits immediately following a declared disaster, use a Privacy Act statement (5 U.S.C. 552a(e)(3)) to provide notice to applicants regarding the use of their information. The Privacy Act statement is read to applicants from DHS/FEMA call center employees and is displayed and agreed to by applicants applying over the internet. Also, DHS/FEMA Form 009–0–3 requires the applicant's signature in order to receive financial assistance.

Additionally, DHS/FEMA provides notice via its Disaster Assistance Improvement Program Privacy Impact Assessment and DHS/FEMA's Privacy Act System of Records Notice, DHS/FEMA—008 Disaster Recovery Assistance Files, 78 FR 25282 (Apr. 30, 2013). DHS/FEMA has published a Notice concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

## Categories of Records/Individuals Involved

Data elements disclosed in this computer matching are Personally Identifiable Information (PII) from the specified systems of record. The data elements supplied are as follows:

- FEMA Registration ID.
- Disaster Number.
- Social Security Number (SSN)—the head of household SSN.
- First and Last Name and Middle Initial of the head of household.
- DOB—date of birth of head of household.
- Damaged Address Street Address—the head of household's damaged street address.

## Period of the Match

Matching will begin at least 40 days from the date that copies of the Computer Matching Agreement, signed by HUD and DHS/FEMA DIBs, are sent to both Houses of Congress and OMB; or at least 30 days from the date this notice is published in the **Federal Register**, whichever is later, provided that no comments that would result in a contrary determination are received. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the Agreement advises the other in writing to terminate or modify the Agreement.

**Authority:** 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 26, 2016.

**Helen Goff Foster,**

*Chief Privacy Officer/Senior Agency Official for Privacy.*

[FR Doc. 2016–22006 Filed 9–13–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5916–N–16]**

## 60-Day Notice of Proposed Information Collection: Public Housing Capital Fund Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* November 14, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

### A. Overview of Information Collection

*Title of Information Collection:* Public Housing Capital Fund Program.

*OMB Approval Number:* 2577–0157.

*Type of Request:* Extension of currently approved collection.

*Form Numbers:* HUD Form 50075.1—Annual Statement/Performance and Evaluation Report and HUD–50075.2—Capital Fund Program Five-Year Action Plan, HUD–5084, HUD–5087, HUD–51000, HUD–51001, HUD–51002, HUD–51003, HUD–51004, HUD–51915, HUD–51915–A, HUD–51971–I–II, HUD–52396, HUD–52427, HUD–52482, HUD–52483–A, HUD–52484, HUD–52485, HUD–52651–A, HUD–52829, HUD–52830, HUD–52833, HUD–52845, HUD–52846, HUD–52847, HUD–52849, HUD–53001, HUD–53015, HUD–5370, HUD–5370EZ, HUD–5370C, HUD–5372, HUD–5378, HUD–5460, HUD–52828, 50071, 5370–C1, 5370–C2.

*Description of the need for the information and proposed use:* Each year Congress appropriates funds to approximately 3,100 Public Housing Authorities (PHAs) for modernization, development, financing, and management improvements. The funds are allocated based on a complex formula. The forms in this collection are used to appropriately disburse and utilize the funds provided to PHAs. Additionally, these forms provide the information necessary to approve a financing transaction in addition to any Capital Fund Financing transactions. Respondents include the approximately 3,100 PHA receiving Capital Funds and any other PHAs wishing to pursue financing.

*Respondents* (*i.e.,* affected public): Public Housing Authorities.

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| HUD–5084 | 3,100 | 1 | 3,100 | 1.5 | 4,650 | $30 | $139,500 |
| HUD–5087 | 50 | 1 | 50 | 3 | 150 | 50 | 7,500 |
| HUD–50071 | 10 | 1 | 10 | 0.5 | 5 | 50 | 250 |
| HUD–50075.1 | 3,100 | 1 | 3,100 | 2.2 | 6,820 | 30 | 204,600 |
| HUD–50075.2 | 3,100 | 1 | 3,100 | 1 | 3,100 | 30 | 93,000 |
| HUD–51000 | 590 | 1 | 590 | 1 | 590 | 30 | 17,700 |
| HUD–51001 | 2,550 | 12 | 30,600 | 3.5 | 107,100 | 30 | 2,998,800 |
| HUD–51002 | 1,600 | 5 | 8,000 | 1 | 8,000 | 30 | 240,000 |
| HUD–51003 | 500 | 2 | 1,000 | 1.5 | 1,500 | 30 | 45,000 |
| HUD–51004 | 500 | 2 | 1,000 | 2.5 | 2,500 | 30 | 75,000 |
| HUD–51915/51915–A | 2,630 | 1 | 2,630 | 3 | 7,890 | 30 | 236,700 |
| HUD–51971–I, II | 80 | 1 | 80 | 1.5 | 120 | 30 | 3,600 |
| HUD–52396 | 96 | 1 | 96 | 2 | 192 | 30 | 5,760 |
| HUD–52427 | 88 | 1 | 88 | 0.5 | 44 | 30 | 1,320 |
| HUD–52482 | 40 | 1 | 40 | 2 | 80 | 30 | 2,400 |
| HUD–52483–A | 40 | 1 | 40 | 2 | 80 | 30 | 2,400 |
| HUD–52484 | 532 | 4 | 2,128 | 10 | 21,280 | 30 | 638,400 |
| HUD–52485 | 40 | 1 | 40 | 1 | 40 | 30 | 1,200 |
| HUD–52651–A | 40 | 1 | 40 | 2.5 | 100 | 30 | 3,000 |
| HUD–52829 | 25 | 1 | 25 | 40 | 1000 | 50 | 50,000 |
| HUD–52830 | 25 | 1 | 25 | 16 | 400 | 50 | 20,000 |
| HUD–52833 | 3,100 | 1 | 3,100 | 13 | 40,300 | 30 | 1,209,000 |
| HUD–52836 | 10 | 1 | 10 | 0.5 | 5 | 50 | 250 |
| HUD–52845 | 25 | 1 | 25 | 8 | 200 | 50 | 10,000 |
| HUD–52846 | 25 | 1 | 25 | 16 | 400 | 50 | 20,000 |
| HUD–52847 | 25 | 1 | 25 | 8 | 200 | 50 | 10,000 |
| HUD–52849 | 25 | 1 | 25 | 1 | 25 | 50 | 1,250 |
| HUD–53001 | 3,100 | 1 | 3,100 | 2.5 | 7,750 | 30 | 232,500 |
| HUD–53015 | 40 | 1 | 40 | 3 | 120 | 30 | 3,600 |
| HUD–5370, 5370EZ | 2,694 | 1 | 2,694 | 1 | 2,694 | 30 | 80,820 |
| HUD–5370C | 2,694 | 1 | 2,694 | 1 | 2,694 | 30 | 80,820 |
| HUD–5372 | 590 | 1 | 590 | 1 | 590 | 30 | 17,700 |

| Information collection | Number of respondents | Frequency of response | Responses per annum | Burden hour per response | Annual burden hours | Hourly cost per response | Annual cost |
|---|---|---|---|---|---|---|---|
| HUD–5378 .................. | 158 | 24 | 3,792 | 0.25 | 948 | 30 | 28,440 |
| HUD–5460 .................. | 40 | 1 | 40 | 1 | 40 | 30 | 1,200 |
| Public Housing Information Center Certification of Accuracy .... | 3,100 | 1 | 3,100 | 2 | 6,200 | 30 | 186,000 |
| HUD–52828 Physical Needs Assessment form 3,100 | | | | | | | |
| Broadband Feasibility determination ........... | 3,100 | 1 | 3,100 | 15.4 | 47,740 | 50 | 2,387,000 |
| Broadband Feasibility determination ........... | 3,100 | 1 | 3,100 | 10 | 31,000 | 50 | 1,550,000 |
| Total ...................... | 3,100 | 1 | 3,100 | 98.9 | 306,537 | 35 | 10,604,710 |

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: September 7, 2016.

**Danielle Bastarache,**

*Deputy Assistant Secretary, Office of Policy, Programs and Legislative Initiatives.*

[FR Doc. 2016–22088 Filed 9–13–16; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5963–D–01]**

## Order of Succession for the Office of the Chief Information Officer

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of Order of Succession.

**SUMMARY:** In this notice, the Chief Information Officer (CIO) for the Department of Housing and Urban Development designates the Order of Succession for the Office of the Chief Information Officer. This Order of Succession supersedes all prior Orders of Succession for the Office of the Chief Information Officer, including the Order of Succession published on November 1, 2011.

**DATES:** *Effective Date:* August 25, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kevin R. Cooke, Jr., Principal Deputy Chief Information Officer, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410, telephone number (202) 708–0306 (this is not a toll free number). Persons with hearing or speech impairments may access this number by calling the toll free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The CIO for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the CIO when, by reason of absence, disability, or vacancy in office, the CIO is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior orders of succession for the Office of the Chief Information Officer, including the Order of Succession published on November 1, 2011 (76 FR 67472).

Accordingly, the CIO designates the following Order of Succession:

**Section A. Order of Succession**

During any period when, by reason of absence, disability, or vacancy in office, the Chief Information Officer for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Chief Information Officer, the following officials within the Office of the Chief Information Officer are hereby designated to exercise the powers and perform the duties of the Office. No individual who is serving in an office listed below in an acting capacity may act as the Chief Information Officer pursuant to this Order of Succession.

(1) Principal Deputy Chief Information Officer;

(2) Deputy Chief Information Officer for IT Infrastructure and Operations;

(3) Chief Technology Officer;

(4) Chief Information Security Officer;

(5) Deputy Chief Information Officer for Business and IT Resource Management;

(6) Deputy Chief Information Officer for Customer Relationship and Performance Management.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes all prior Orders of Succession for the Office of the Chief Information Officer, including the Order of Succession published on November 1, 2011 (76 FR 67472).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 25, 2016.

**Rafael Diaz,**

*Chief Information Officer.*

[FR Doc. 2016–22089 Filed 9–13–16; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5960–D–01]**

### Order of Succession for the Office of the Chief Human Capital Officer

**AGENCY:** Office of the Chief Human Capital Officer, HUD.

**ACTION:** Notice of order of succession.

**SUMMARY:** In this notice, the Chief Human Capital Officer for the Department of Housing and Urban Development designates the Order of Succession for the Office of the Chief Human Capital Officer. This Order of Succession supersedes all prior orders of succession for the Office of the Chief Human Capital Officer, including the Order of Succession published on November 7, 2011.

**DATES:** *Effective Date:* September 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Linda K. Hawkins, Office of the Chief Human Capital Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 2286D, Washington, DC 20410; telephone number (202) 402–3095 (this is not a toll-free number). Persons with hearing or speech impairments may call HUD's toll-free Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

The Chief Human Capital Officer for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Human Capital Officer when, by reason of absence, disability, or vacancy in office, the Chief Human Capital Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior orders of succession for the Office of the Chief Human Capital Officer, including the Order of Succession published on November 7, 2011 (76 FR 69031).

Accordingly, the Chief Human Capital Officer designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Human Capital Officer for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Chief Human Capital Officer, the following officials within the Office of the Chief Human Capital Officer are hereby designated to exercise the powers and perform the duties of the office. No individual who is serving in an office listed below in an acting capacity shall act as the Chief Human Capital Officer pursuant to this Order of Succession.

1. Deputy Chief Human Capital Officer;
2. Human Capital Officer, Office of Human Capital Services;
3. Chief Learning Officer, HUD LEARN.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes all prior orders of succession for the Office of the Chief Human Capital Officer, including the Order of Succession published on November 7, 2011 (76 FR 69031).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 2016.

**Towanda A. Brooks,**

*Chief Human Capital Officer.*

[FR Doc. 2016–22005 Filed 9–13–16; 8:45 am]

**BILLING CODE 4210–67–P**

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5964–D–01]**

### Order of Succession for the Office of Public Affairs

**AGENCY:** Office of the Assistant Secretary for Public Affairs, HUD.

**ACTION:** Notice of order of succession.

**SUMMARY:** In this notice, the Assistant Secretary for Public Affairs designates the Order of Succession for the Office of Public Affairs. This Order of Succession supersedes all prior orders of succession for the Office of Public Affairs, including the Order of Succession published on July 20, 2011.

**DATES:** *Effective Date:* September 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** Jereon Brown, General Deputy Assistant Secretary, Office of Public Affairs, Department of Housing and Urban Development, 451 7th Street SW., Room 10130, Washington, DC 20410–6000, telephone number 202–708–0980. (This is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Public Affairs is issuing this Order of Succession of officials authorized to perform the functions and duties of the Assistant Secretary for Public Affairs when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public Affairs is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior orders of succession for the Office of Public Affairs, including the Order of Succession published on July 20, 2011 (76 FR 43337).

Accordingly, the Assistant Secretary designates the following Order of Succession:

**Section A. Order of Succession**

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Public Affairs is not available to exercise the powers or perform the duties of the office of the Assistant Secretary, the following officials within the Office of Public Affairs are hereby designated to exercise the powers and perform the duties of the Office. No individual who is serving in an office listed below in an acting capacity may act as the Assistant Secretary for Public Affairs pursuant to this Order of Succession.

(1) General Deputy Assistant Secretary;

(2) Deputy Assistant Secretary for Public Affairs;

(3) Supervisory Public Affairs Specialist.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

**Section B. Authority Superseded**

This Order of Succession supersedes all prior orders of succession for the Office of the Assistant Secretary for Public Affairs, including the Order of Succession published on July 20, 2011 (76 FR 43337).

**Authority:** Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 7, 2016.

**Jaime S. Castillo,**

*Assistant Secretary for Public Affairs.*

[FR Doc. 2016–22004 Filed 9–13–16; 8:45 am]

BILLING CODE 4210–67–P

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–HQ–R–2016–153; FXGO1664091HCC0–FF09D00000–167]**

## Wildlife and Hunting Heritage Conservation Council; Public Meeting

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council). The Council provides advice about wildlife and habitat conservation endeavors that benefit wildlife resources; encourage partnership among the public, sporting conservation organizations, States, Native American tribes, and the Federal Government; and benefit recreational hunting.

**DATES:** *Meeting:* Wednesday, October 26, 2016, from 10:30 a.m. to 5 p.m., and Thursday, October 27, 2016, from 8 a.m. to 1 p.m. (Eastern Daylight Time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see "Public Input" under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held in Room 104A at the USDA Whitten Building, 12th Street and Jefferson Drive SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Joshua Winchell, Council Designated Federal Officer, U.S. Fish and Wildlife Service, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone: (703) 358–2639; or email: *joshua_winchell@fws.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Wildlife and Hunting Heritage Conservation Council will hold a meeting.

### Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit wildlife resources;
2. Encourage partnership among the public, sporting conservation organizations, States, Native American tribes, and the Federal Government; and
3. Benefit recreational hunting.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Conservation Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Wildlife Restoration Program;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, tribal, and Federal governments; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendations to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the Designated Federal Officer in consultation with the Council Chairperson, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

### Meeting Agenda

The Council will convene to consider issues including:

1. Wildlife habitat and health;
2. Funding for public lands and wildlife management;
3. Endangered Species Act; and
4. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

### Public Input

| If you wish to | You must contact the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than |
|---|---|
| Attend the meeting. | October 14, 2016. |
| Submit written information or questions before the meeting for the council to consider during the meeting. | October 14, 2016. |
| Give an oral presentation during the meeting. | October 14, 2016. |

*Attendance*

To attend this meeting, register by close of business on the dates listed in "Public Input" under **SUPPLEMENTARY INFORMATION.** Please submit your name, time of arrival, email address, and phone number to the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**).

*Submitting Written Information or Questions*

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date in Public Input, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Designated Federal Officer in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

*Giving an Oral Presentation*

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Designated Federal Officer, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Designated Federal Officer up to 30 days subsequent to the meeting.

**Meeting Minutes**

Summary minutes of the conference will be maintained by the Council Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). They will be available for public inspection within 90 days of the meeting, and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

**Joshua Winchell,**

*Designated Federal Officer, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–22055 Filed 9–13–16; 8:45 am]

**BILLING CODE 4333–15–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[16X L1109AF LLUT980300–L13100000.XZ0000–24–1A]**

### Utah Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act, the Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will host a meeting.

**DATES:** On Oct. 17, 2016, the RAC will take a field tour of the San Rafael Desert Master Leasing Plan project area from 9:00 a.m. to 5:00 p.m. Attendance is optional. On Oct. 18, the RAC will meet from 8:30 a.m. to 2:00 p.m.

**ADDRESSES:** On Oct. 18, the RAC will meet at the John Wesley Powell River History Museum, 1765 E. Main Street, Green River, Utah 84525.

**FOR FURTHER INFORMATION CONTACT:** If you wish to attend the field tour, contact Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4033; or, *lbird@blm.gov* no later than Tuesday, Oct. 11, 2016.

**SUPPLEMENTARY INFORMATION:** Agenda topics will include the San Rafael Desert Master Leasing Plan and sage-grouse plan grazing thresholds.

A half-hour public comment period will take place on Oct. 18 from 12:30–1:00 p.m., where the public may address the RAC. Written comments may also be sent to the BLM at the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

**Authority:** 43 CFR 1784.4–1

**Jenna Whitlock,**

*Acting State Director.*

[FR Doc. 2016–22179 Filed 9–13–16; 8:45 am]

**BILLING CODE 4310–DQ–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–VRP–WS–21876; PPWOVPADW0, PPMPRLE1Y.LB0000 (166)]**

### Proposed Information Collection; Backcountry/Wilderness Use Permit

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (National Park Service, NPS) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on May 31, 2017. We may not conduct or sponsor a survey, and a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by November 14, 2016.

**ADDRESSES:** Send your comments on the IC to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 12201 Sunrise Valley Drive, MS–242, Reston, VA 20192 (mail); or *madonna_baucum@nps.gov* (email). Please include "1024–0022" in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Roger Semler, Chief, Wilderness Stewardship Division, Visitor & Resource Protection Directorate, National Park Service, 1201 I Street NW., Room 940, Washington, DC 20005 (mail); or *roger_semler@nps.gov* (email). Please include "1024–0022" in the subject line.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

In 1976, the NPS initiated a backcountry registration system in accordance with the regulations found at 36 CFR 1.5, 1.6 and 2.10. The objective of the registration system is to provide users access to backcountry and wilderness areas of national parks with continuing opportunities for solitude and primitive and unconfined recreation, while enhancing protection of natural and cultural resources and providing a means of disseminating public safety and outdoor ethics messages regarding backcountry/wilderness travel and camping. NPS backcountry/wilderness program managers, by designating access and travel routes and camping locations, can redistribute backcountry/wilderness users in response to closures and public use adverse impacts to natural and cultural resources. The system also facilitates redistribution of backcountry/wilderness users due to public safety hazards related to high fire danger, flood, wind, snow or ice hazards hazard, bear activity, or other situations that may temporarily close or restrict access to a portion of the backcountry/wilderness.

The NPS uses the registration system as a means of ensuring backcountry/wilderness users receive up-to-date information on outdoor ethics which minimize social and resource impacts including, but not limited to, sanitation procedures, food storage, campfire use, campsite selection, as well as wildlife activity, trail conditions and weather forecasts to address concerns for visitor safety. Data collected through the registration process is also an important source of information for first responders in the event of an emergency requiring deployment of search and rescue personnel to backcountry/wilderness areas. The registration system also serves to document the spatial and temporal extent, distribution and demographics associated with backcountry/wilderness use and social considerations and perceptions of backcountry/wilderness visitors. All of this information serves as an important resource that informs backcountry and wilderness management and stewardship planning, decision making, and operations.

The Backcountry/Wilderness Use Permit is an extension of the NPS statutory authority responsibility to protect the park areas it administers and to manage the public use thereof (54 U.S.C. 100101, 100751, 3210102). NPS regulations codified in 36 CFR parts 1 through 7, 12 and 13 are designated to implement statutory mandates that provide for resource protection and pubic enjoyment. NPS Forms 10–404, "Backcountry/Wilderness Use Permit Application" and 10–404A, "Backcountry/Wilderness Use Permit Hangtag" are the primary forms used to provide access into NPS backcountry areas including those areas that require a reservation to enter where use limits are imposed in accordance with other NPS regulations. Such permitting enhances the ability to the NPS to educate users on potential hazards, search and rescue efforts, and resource protection.

## II. Data

*OMB Control Number:* 1024–0022.

*Expiration Date:* May 31, 2016.

*Title:* Backcountry/Wilderness Use Permit (36 CFR 1.5, 1.6, and 2.10).

*Service Form Numbers:* NPS Forms 10–404, Backcountry/Wilderness Use Permit" and 10–404A, "Backcountry/Wilderness Use Permit Hangtag".

*Type of Request:* Revision of a currently approved collection of information.

*Description of Respondents:* Individuals wishing to use backcountry and wilderness areas within national parks.

*Estimated Average Number of Responses:* 285,000.

*Frequency of Response:* 1 per respondent.

*Estimated Average Time Burden per Respondent:* 5 minutes.

*Estimated Total Annual Reporting Burden:* 23,750 hours.

*Respondent's Obligation:* Required to obtain or retain a benefit.

## III. Comments

We invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 8, 2016.

**Madonna L. Baucum,**

*Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2016–22010 Filed 9–13–16; 8:45 am]

**BILLING CODE 4310–EH–P**

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

**[RR03250000; XXXR4079V1; RA.R3441003.0960000]**

## Notice of Cancellation To Prepare a Draft Environmental Impact Statement for the San Carlos Irrigation Project, Arizona

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation (Reclamation) is terminating preparation of an Environmental Impact Statement (EIS) for the San Carlos Irrigation Project. The proposed project scope has been modified, and Reclamation has determined that an Environmental Assessment (EA) rather than an EIS is the appropriate level of environmental documentation for the proposed action.

**FOR FURTHER INFORMATION CONTACT:** Mr. Sean Heath at (623) 773–6250, or email at *sheath@usbr.gov.*

**SUPPLEMENTARY INFORMATION:** The proposed project includes rehabilitation and modernization of San Carlos Irrigation Project Joint Works and District Works irrigation canals. Primary components of the rehabilitation are the lining of all or most of the main canals with concrete to reduce seepage and evaporation losses from the system, the modification of the canal prism (cross-sections and profiles) to increase system efficiency, the inclusion of a water storage facility, and modernized measurement and control amenities to improve delivery service. To protect and preserve the new lined conveyance system, separate storm water drainage facilities would be dedicated to cross drainage storm water management.

A Notice of Intent to prepare the EIS for the San Carlos Irrigation Project was published in the **Federal Register** on August 31, 2010 (75 FR 53332). The proposed action was originally scoped as an EIS. Publication of the **Federal Register** notice was followed with a scoping letter to potentially interested individuals, organizations, tribes, and agencies, and posting of the notice on Reclamation's Phoenix Area Office Web site. In addition, a news release was submitted to 12 news media outlets. Two public scoping meetings were held to solicit public comment. Reclamation received nine comment letters regarding the proposed action, none of which identified potentially significant effects to the human environment.

The Notice of Intent described a proposal to rehabilitate and line up to 40 miles of major canals, such as the Florence-Casa Grande, Casa Grande, and North Side canals, along with construction of new check structures and cross-drainage features. During preparation of the EIS, a new alternative was subsequently developed that would reduce potential environmental impacts of the project. The new alternative would accommodate the delivery of irrigation flows during construction, thereby reducing potential adverse impacts to sensitive riparian habitat and bird species on the Gila River. Furthermore, the geographic scope of the rehabilitation was reduced from 40 miles to 25 miles. Reclamation has not identified other environmental effects of the proposed action that are potentially significant and would warrant us to consider preparation of an EIS over an EA. Based on the reduction in scope, and the limited response to solicitation of comments, Reclamation has determined that an EA is the appropriate level of environmental analysis for the proposed action.

Dated: September 8, 2016.

**Marc Maynard,**

*Acting Regional Director, Lower Colorado Region.*

[FR Doc. 2016–22053 Filed 9–13–16; 8:45 am]

**BILLING CODE 4332–90–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–555 and 731–TA–1310 (Final)]**

### Certain Amorphous Silica Fabric From China; Scheduling of the Final Phase of Countervailing Duty and Antidumping Duty Investigations

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping and countervailing duty investigation Nos. 701–TA–555 and 731–TA–1310 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain amorphous silica fabric from China, provided for in subheadings 7019.59.40 and 7019.59.90 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be subsidized and sold at less-than-fair-value.[1]

**DATES:** *Effective Date:* September 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled pursuant to sections 705(b) and 731(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)), as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of certain amorphous silica fabric, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on January 20, 2016, by Auburn Manufacturing, Inc., Mechanic Falls, Maine.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on January 4, 2017, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on Thursday, January 18, 2017, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 12, 2017. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on January 17, 2017, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is January 11, 2017. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 25, 2017. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before January 25, 2017. On February 8, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 10, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

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[1] The product covered by these investigations is woven (whether from yarns or rovings) industrial grade amorphous silica fabric, which contains a minimum of 90 percent silica (SiO2) by nominal weight, and a nominal width in excess of 8 inches. For a complete description of the scope of these investigations, see the International Trade Administration's **Federal Register** notice (81 FR 60341) of September 1, 2016, *Antidumping Duty Investigation of Certain Amorphous Silica Fabric From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 9, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–22096 Filed 9–13–16; 8:45 am]

**BILLING CODE 7020–02–P**

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## DEPARTMENT OF JUSTICE

## Antitrust Division

### United States v. Nexstar Broadcasting Group Inc., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Nexstar Broadcasting Group, Inc.*, Civil Action No. 1:16–cv–01772 (JDB). On September 2, 2016, the United States filed a Complaint alleging that Nexstar Broadcasting Group, Inc.'s acquisition of Media General, Inc. would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed on the same day as the Complaint, resolves the case by requiring Nexstar to divest certain broadcast television stations in Green Bay-Appleton, Wisconsin; Roanoke-Lynchburg, Virginia; Lafayette, Louisiana; Terre Haute, Indiana; Ft. Wayne, Indiana; and Davenport, Iowa/Rock Island-Moline, Illinois. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the industry.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's Web site at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's Web site, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Owen Kendler, Asst. Chief, Litigation III, Antitrust Division, Department of Justice, Washington, DC 20530, (telephone: 202–305–8376).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

### United States District Court for the District of Columbia

*United States of America, Department of Justice, Antitrust Division, 450 Fifth Street NW., Suite 7000, Washington, DC 20530,* Plaintiff, v. *Nexstar Broadcasting Group, Inc., 545 E. John Carpenter Freeway, Suite 700, Irving, TX 75062,* and *Media General, Inc., 333 E. Franklin Street, Richmond, VA 23219* Defendants.

Case No.: 1:16–cv–01772
Judge: John D. Bates
Filed: 09/02/2016

### Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the acquisition by Nexstar Broadcasting Group, Inc. ("Nexstar") of Media General, Inc. ("Media General") (collectively, "Defendants"), and to obtain other equitable relief.

### I. Nature of the Action

1. Pursuant to an Agreement and Plan of Merger dated January 27, 2016, Nexstar agreed to acquire Media General for approximately $4.6 billion. Nexstar and Media General own and operate broadcast television stations in multiple Designated Market Areas ("DMAs") throughout the United States.

2. Nexstar's and Media General's television stations compete head to head for the business of local and national companies that seek to advertise on broadcast television stations operating in the following DMAs: Roanoke-Lynchburg, Virginia; Terre Haute, Indiana; Ft. Wayne, Indiana; Green Bay-Appleton, Wisconsin; Lafayette, Louisiana; and Davenport, Iowa/Rock Island-Moline, Illinois ("Quad Cities") (collectively, the "DMA Markets"). In each of these six DMAs, Nexstar and Media General together account for a substantial share of the broadcast television station advertising revenues in that DMA.

3. Specifically, the Defendants operate three stations that account for approximately 41 percent of broadcast television station gross advertising revenues in the Roanoke-Lynchburg, Virginia DMA; three stations that account for approximately 100 percent of broadcast television station gross advertising revenues in the Terre Haute, Indiana DMA; three stations that account for approximately 51 percent of broadcast television station gross advertising revenues in the Ft. Wayne, Indiana DMA; two stations that account for approximately 51 percent of broadcast television station gross advertising revenues in the Green Bay-Appleton, Wisconsin DMA; three stations that account for approximately 53 percent of broadcast television station gross advertising revenues in the Lafayette, Louisiana DMA; and three stations that account for approximately 56 percent of broadcast television station gross advertising revenues in the Quad Cities DMA.

4. Nexstar and Media General also compete to license programming to multichannel video programming distributors ("MVPDs") for retransmission to MVPD subscribers and each operate at least one station affiliated with a major broadcast network in each of the DMA Markets. Because MVPDs in each DMA Market retransmit the Defendants' programming to MVPD subscribers in those markets, Nexstar and Media General compete for viewers who are MVPD subscribers.

5. If consummated, the proposed acquisition would eliminate the substantial head-to-head competition that currently exists between Nexstar and Media General and likely result in (1) higher prices for broadcast television spot advertising in each of the DMA Markets; and (2) higher licensing fees for the retransmission of broadcast television programming to MVPD subscribers in each of the DMA Markets. Consequently, Defendants' proposed transaction likely would substantially lessen competition in those markets in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

## II. Jurisdiction, Venue, and Commerce

6. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Nexstar and Media General from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

7. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

8. Nexstar and Media General are engaged in interstate commerce and in activities substantially affecting interstate commerce. They each own and operate broadcast television stations in various locations throughout the United States. They each sell television advertising for those stations and license programming to MVPDs for retransmission to MVPD subscribers. Their television advertising sales and retransmission licenses have a substantial effect upon interstate commerce.

9. Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in this District under Section 12 of the Clayton Act, 15 U.S.C. 22, and 28 U.S.C. 1391(c).

## III. The Defendants

10. Nexstar is a Delaware corporation with its headquarters in Irving, Texas. Nexstar reported net operating revenues of over $890 million in 2015. Nexstar owns, operates, or services broadcast television stations in 62 metropolitan areas.

11. Media General is a Virginia corporation with its headquarters in Richmond, Virginia. Media General reported net operating revenues of over $1.3 billion in 2015. Media General owns, operates, or services broadcast television stations in 48 metropolitan areas.

## IV. Relevant Markets

12. The relevant product and geographic markets and lines of commerce and sections of the country for assessing this merger under Section 7 of the Clayton Act are (1) the sale of broadcast television spot advertising to advertisers targeting viewers in each of the DMA Markets and (2) the licensing of broadcast television programming to MVPDs that retransmit the programming to subscribers in each of the DMA Markets.

13. A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition. The Federal Communications Commission (''FCC'') also uses DMAs as geographic units with respect to its MVPD regulations.

14. Nexstar and Media General sell television advertising to local and national advertisers in each of the DMA Markets. Nexstar's and Media General's television stations in each of the DMA Markets generate a significant amount of revenues by selling advertising to local and national advertisers who want to reach viewers in those markets. Spot advertising placed on television stations in a DMA is aimed at reaching viewing audiences in that DMA, and television stations broadcasting outside that DMA do not provide effective access to those audiences. For this reason, in the event of a small but significant increase in broadcast television advertising spot prices in a DMA Market, advertisers would not switch enough advertising purchases to television stations outside the DMA Market to render the price increase unprofitable.

15. Spot advertising differs from network and syndicated television advertising. In contrast to spot advertising sales, television networks and producers of syndicated programs sell network and syndicated television advertising on a nationwide basis for broadcast in every market where the network or syndicated program is aired.

16. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, primarily through MVPDs. Broadcast television stations then sell advertising to businesses that want to advertise their products to television viewers. A television station's advertising rates typically are based on the station's ability, relative to competing television stations, to attract viewing audiences that have certain demographic characteristics that advertisers want to reach.

17. Broadcast television spot advertising possesses a unique combination of attributes that set it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, broadcast television spot advertising generally reaches the largest percentage of all potential customers in a particular target geographic area and is therefore especially effective in introducing, establishing, and maintaining the image of a product. Other media, such as radio, newspapers, or outdoor billboards, are not desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

18. Like broadcast television, other satellite and cable television networks, such as those carried by MVPDs, combine elements of sight, sound, and motion, but they are not a desirable substitute for broadcast television spot advertising for two important reasons. First, broadcast television can reach well over 90 percent of homes in a DMA, while other satellite and cable television networks carried by MVPDs often reach many fewer homes. Even when several MVPDs within a DMA jointly offer television spot advertising through a consortium called an interconnect, MVPD spot advertising does not match the reach of broadcast television spot advertising. As a result, an advertiser can achieve greater audience penetration through broadcast television spot advertising than through advertising on satellite and cable television networks that MVPDs distribute. Second, because MVPDs may offer more than 100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than other cable and satellite television networks that MVPDs distribute, broadcast television provides a much easier and more efficient means for an advertiser to reach a high proportion of its target demographic in a broad area.

19. While media buyers often buy advertising on cable and satellite networks that MVPDs distribute, they

do so not as a substitute for broadcast television spot advertising in the DMA Markets, but rather as a supplement, in order to reach a specific demographic (*e.g.,* 18–24 year olds) with greater frequency, or to target narrow geographic areas within a DMA. A small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to advertising on other cable and satellite networks distributed by MVPDs.

20. Internet-based media is also not currently a substitute for broadcast television spot advertising. Although Online Video Distributors (''OVDs'') such as Netflix and Hulu are important sources of video programming, as with cable and satellite television advertising on MVPDs, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. Non-video Internet advertising, *e.g.,* Web site banner advertising, lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, local media buyers currently purchase Internet-based advertising primarily as a supplement to broadcast television spot advertising, and a small but significant price increase by broadcast television spot advertising providers would not be made unprofitable by advertisers switching to Internet-based advertising.

21. In addition, broadcast television stations negotiate prices individually with advertisers; consequently, television stations can charge different advertisers different prices. Broadcast television stations generally can identify advertisers with strong preferences to advertise on broadcast television stations in their DMAs. Because of this ability to price discriminate among customers, broadcast television stations may target with higher prices advertisers that view broadcast television in their DMA as particularly effective for their needs, while maintaining lower prices for more price-sensitive advertisers. As a result, a hypothetical monopolist could profitably raise prices to those advertisers that view broadcast television as a necessary advertising medium, either as their sole means of advertising or as a necessary part of a total advertising plan.

22. In addition to selling broadcast spot advertising, Nexstar and Media General independently license competing broadcast television programming to MVPDs for retransmission to MVPD subscribers in each of the DMA Markets. MVPDs pay fees for these retransmission rights under a process known in the television industry and under FCC regulations as ''retransmission consent.'' As described below, in each of the DMA Markets, Nexstar and Media General each own and operate broadcast television stations that are affiliated with one of the major broadcast television networks, and their stations reach broad audiences. As a consequence of their retransmission agreements with MVPDs, Nexstar and Media General compete for viewers who are MVPD subscribers in each of the DMA Markets.

## V. Likely Anticompetitive Effects

23. Broadcast television station ownership in each of the DMA Markets is already highly concentrated. In each of those markets, four stations—each affiliated with a major network—had more than 90 percent of gross broadcast television advertising revenues in 2015. Defendants' stations accounted for at least 40 percent of such revenues, reflecting that in each of the DMA Markets, Nexstar and Media General own and operate stations that are affiliated with one of the major broadcast television networks. These networks offer popular programming that individually reach a much broader audience than any other video programming, including cable and satellite network programming carried by MVPDs and OVDs. Consequently, bringing the Nexstar and Media General stations under common ownership would significantly concentrate the television viewing audiences in each of the DMA Markets.

24. Market concentration is often one useful indicator of the likely competitive effects of a merger. The more concentrated a market, and the more a transaction would increase concentration in a market, the more likely it is that the transaction would result in a meaningful reduction in competition that harms consumers.

25. The Herfindahl-Hirschman Index (''HHI'') is a standard measure of market concentration (defined and explained in Appendix A). Under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2,500) that involve an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

26. Using 2015 gross broadcast television advertising revenues, the combination of Nexstar and Media General would result in HHIs in excess of 2,500 in each DMA Market:

| Designated market area | Post-acquisition HHI |
|---|---|
| Roanoke-Lynchburg, Virginia | 3,300 |
| Terre Haute, Indiana | 9,800 |
| Fort Wayne, Indiana | 3,600 |
| Green Bay-Appleton, Wisconsin | 3,900 |
| Lafayette, Louisiana | 4,700 |
| Quad Cities, Iowa and Illinois | 4,200 |

These post-acquisition HHIs, which reflect increases of more than 200 points in each DMA Market, are well above the 2,500 threshold at which a merger is presumed likely to enhance market power.

27. In addition to substantially increasing the concentration levels in each of the DMA Markets, the proposed transaction would combine television stations that are at least partial substitutes and vigorous competitors in markets with limited alternatives. In each of the DMA Markets, Defendants each have broadcast television stations that are affiliated with the major national television networks: ABC, CBS, NBC and FOX. In the Roanoke-Lynchburg, Virginia DMA, Nexstar owns and operates WFXR, a FOX affiliate; and Media General owns and operates WSLS–TV, an NBC affiliate. In the Terre Haute, Indiana DMA, Nexstar owns or operates WTWO, an NBC affiliate, and WAWV–TV, an ABC affiliate; and Media General owns and operates WTHI–TV, a CBS affiliate. In the Ft. Wayne, Indiana DMA, Nexstar owns and operates WFFT–TV, a FOX affiliate; and Media General owns and operates WANE–TV, a CBS affiliate. In the Green Bay-Appleton, Wisconsin DMA, Nexstar owns and operates WFRV–TV, a CBS affiliate; and Media General owns and operates WBAY–TV, an ABC affiliate. In the Lafayette, Louisiana DMA, Nexstar owns and operates KADN–TV, a FOX affiliate, and KLAF–LD, an NBC affiliate; and Media General owns and operates KLFY–TV, a CBS affiliate. In the Quad Cities DMA, Nexstar owns or operates WHBF–TV, a CBS affiliate, and KLJB, a FOX affiliate; and Media General owns and operates KWQC–TV, an NBC affiliate. Their respective affiliations with those networks, and their local news operations, provide Defendants' stations with a variety of competing programming options that are often each other's next-best or second-best substitutes for many viewers and advertisers.

28. Advertisers benefit from Defendants' head-to-head competition in the sale of broadcast television spot advertising in the DMA Markets. Advertisers purposefully spread their

advertising dollars across numerous spot advertising suppliers to reach their marketing goals most efficiently. After the proposed acquisition, advertisers in each of the DMA Markets would likely find it more difficult to "buy around" Defendants' combined stations in response to higher advertising rates, than to "buy around" Nexstar's stations or Media General's stations, as separate entities, as they could have done before the proposed acquisition. Because a significant number of advertisers would likely be unable to reach their desired audiences as effectively unless they advertise on at least one station that Nexstar would control after the proposed acquisition, those advertisers' bargaining positions would be weaker, and the advertising rates they pay would likely increase.

29. The proposed merger between Nexstar and Media General would also diminish competition in the negotiation of retransmission agreements with MVPDs in the DMA Markets. Post-acquisition, Nexstar would gain the ability to threaten MVPDs in each of the DMA Markets with the simultaneous blackout of at least two major broadcast networks: its own network(s) and Media General's network(s). That threatened loss of programming, and the resulting diminution of an MVPD's subscribers and profits, would significantly strengthen Nexstar's bargaining position with MVPDs. Prior to the merger, an MVPD's failure to reach a retransmission agreement with Nexstar for a broadcast television station might result in a blackout of that station and threaten some subscriber loss for the MVPD. But because the MVPD would still be able to offer programming on Media General's major network affiliates, which are at least partial substitutes for Nexstar's, many MVPD subscribers would simply switch stations instead of cancelling their MVPD subscriptions. After the merger, an MVPD negotiating with Nexstar over a retransmission agreement could be faced with the prospect of a dual blackout of major broadcast networks (or worse), a result more likely to cause the MVPD to lose subscribers and therefore to accede to Nexstar's retransmission fee demands. For these reasons, the loss of competition between the Nexstar and Media General stations in each DMA Markets would likely lead to an increase in retransmission fees in each DMA and, because increased retransmission fees typically are passed on to consumers, higher MVPD subscription fees.

## VI. Absence of Countervailing Factors

30. De novo entry into each of the DMA Markets is unlikely. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal became available, commercial success would come, at best, over a period of many years. Thus, entry into each DMA Market's broadcast television spot advertising market would not be timely, likely, or sufficient to deter post-merger anticompetitive effects.

31. Other broadcast television stations in each of the DMA Markets also likely would not increase their advertising capacity in response to a price increase by Nexstar. The number of 30-second spots in a DMA is largely fixed by programming and time constraints. This fact makes the pricing of spot advertising responsive to changes in demand. Adjusting programming in response to a pricing change is risky, difficult, and time-consuming. Network affiliates are often committed to the programming provided by the network with which they are affiliated, and it often takes years for a station to build its audience. Programming schedules are complex and carefully constructed, taking many factors into account, such as audience flow, station identity, and program popularity. In addition, stations typically have multi-year contractual commitments for individual shows. Accordingly, a television station is unlikely to change its programming sufficiently or with sufficient rapidity to overcome a small but significant price increase imposed by Nexstar.

32. Entry into the licensing of major broadcast television network programming to MVPDs for retransmission in each of the DMA markets is similarly unlikely. The FCC regulates the ability of MVPDs to import non-local broadcast station signals into a local market. Consequently, in the event of a blackout of a major broadcast television network's signal, an MVPD typically would not be allowed to import the signal from a non-local affiliate of that broadcast television network. Thus, entry would not be timely, likely, or sufficient to deter Nexstar from engaging in anticompetitive price increases or other anticompetitive conduct in its licensing of major broadcast television network programming to MVPDs for retransmission in the DMA markets.

33. Defendants cannot demonstrate acquisition-specific and cognizable efficiencies that would be sufficient to offset the proposed acquisition's likely anticompetitive effects.

## VII. Violation Alleged

34. The United States hereby repeats and realleges the allegations of paragraphs 1 through 33 as if fully set forth herein.

35. Nexstar's proposed acquisition of Media General likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed acquisition likely would have the following effects, among others:

a. Competition in the sale of broadcast television spot advertising in each of the DMA Markets would be substantially lessened;

b. actual and potential competition among Nexstar and Media General in the sale of broadcast television spot advertising in each of the DMA Markets would be eliminated;

c. prices for spot advertising on broadcast television stations in each of the DMA Markets would increase, and the quality of services would decline; and

d. retransmission licensing fees to MVPDs in each of the DMA Markets would increase.

## VIII. Request for Relief

36. The United States requests:

a. That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

b. that the Court permanently enjoin and restrain Defendants from carrying out the transaction, or entering into any other agreement, understanding, or plan by which Nexstar would acquire Media General;

c. that the Court award the United States the costs of this action; and

d. that the Court award such other relief to the United States as the Court may deem just and proper.

Dated: September 2, 2016

Respectfully submitted,

For Plaintiff United States:

/s/ ____________________

Renata B. Hesse (D.C. Bar #466107),
*Acting Assistant Attorney General, Antitrust Division.*

/s/ ____________________

Juan A. Arteaga,
*Deputy Assistant Attorney General.*

/s/ ____________________

Patricia A. Brink,
*Director of Civil Enforcement.*

/s/ ____________________

Owen M. Kendler,
*Asst. Chief, Litigation III Section.*

/s/ ____________________

Mark A. Merva* (D.C. Bar #451743),
*Trial Attorney.*

*United States Department of Justice, Antitrust Division, Litigation III Section, 450 Fifth Street NW., Suite 4000, Washington, DC 20530, Phone: 202-616-1398, Facsimile: 202-514-7308, Email: Mark.Merva@usdoj.gov.*

**Attorney of Record*

## Appendix A

The term "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & FTC, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission. *See id.*

## United States District Court for the District of Columbia

*United States of America,* Plaintiff, v. *Nexstar Broadcasting Group, Inc., and Media General, Inc.,* Defendants.

Case No.: 1:16–cv–01772
Judge: John D. Bates
Filed: 09/02/2016

## Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), Plaintiff United States of America ("United States") files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

## I. Nature and Purpose of the Proceeding

Defendants Nexstar Broadcasting Group, Inc. ("Nexstar") and Media General, Inc. ("Media General") (collectively, "Defendants") entered into an Agreement and Plan of Merger, dated January 27, 2016, pursuant to which Nexstar would acquire Media General for approximately $4.6 billion. Defendants compete head-to-head in the sale of broadcast television spot advertising in the following Designated Market Areas ("DMAs"): Roanoke-Lynchburg, Virginia; Terre Haute, Indiana; Ft. Wayne, Indiana; Green Bay-Appleton, Wisconsin; Lafayette, Louisiana; and Davenport, Iowa/Rock Island-Moline, Illinois ("Quad Cities") (collectively, "the DMA Markets"). Defendants also compete in the DMA Markets for viewers who are multichannel video programming distributor ("MVPD") subscribers.

The United States filed a civil antitrust Complaint on September 2, 2016, seeking to enjoin the proposed acquisition. The Complaint alleges that the proposed transaction likely would lead to (1) higher prices for broadcast television spot advertising in each of the DMA Markets and (2) higher licensing fees for the retransmission of broadcast television programming to MVPD subscribers in each of the DMA Markets. These likely competitive effects would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States also filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the likely anticompetitive effects of the acquisition. The proposed Final Judgment, which is explained more fully below, requires Defendants to divest the following broadcast television stations (the "Divestiture Stations") to Acquirers approved by the United States in a manner that preserves competition in each of the DMA Markets:

- WBAY–TV, located in the Green Bay-Appleton, Wisconsin DMA;
- WSLS–TV, located in the Roanoke-Lynchburg, Virginia DMA;
- KADN–TV, located in the Lafayette, Louisiana DMA;
- KLAF–LD, located in the Lafayette, Louisiana DMA;
- WTHI–TV, located in the Terre Haute, Indiana DMA;
- WFFT–TV, located in the Ft. Wayne, Indiana DMA; and
- KWQC–TV, located in the Quad Cities DMA.

The Hold Separate requires Defendants to take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable, and ongoing business concerns, uninfluenced by the consummation of the acquisition so that competition is maintained until the required divestitures occur.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

## II. Description of the Events Giving Rise to the Alleged Violation

### *A. The Defendants and the Proposed Acquisition*

Nexstar is a Delaware corporation with its headquarters in Irving, Texas. Nexstar owns, operates, or services broadcast television stations in 62 metropolitan areas.

Media General is a Virginia corporation with its headquarters in Richmond, Virginia. Media General owns, operates, or services broadcast television stations in 48 metropolitan areas.

Pursuant to an Agreement and Plan of Merger, dated January 27, 2016, Nexstar agreed to acquire Media General for approximately $4.6 billion.

The proposed transaction, as initially agreed to by Defendants, likely would lessen competition substantially in each of the DMA Markets in (1) the sale broadcast television spot advertising and (2) the licensing of broadcast television programming to MVPDs for retransmission to MVPD subscribers. This acquisition is the subject of the Complaint and proposed Final Judgment filed today by the United States.

### *B. The Transaction's Likely Anticompetitive Effects*

#### 1. Relevant Markets

#### i. Broadcast Television Spot Advertising in the DMA Markets

The Complaint alleges that the sale of broadcast television spot advertising to advertisers targeting viewers located in each DMA Market constitutes a relevant market under Section 7 of the Clayton Act.

Nexstar and Media General sell television advertising to local and national advertisers that seek to target viewers in each of the DMA Markets. A DMA is a geographical unit designated by the A.C. Nielsen Company, a company that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating television audiences. DMAs are widely accepted by television stations, advertisers, and advertising agencies as the standard geographic area to use in evaluating television audience size and demographic composition. A television station's advertising rates typically are based on the station's ability, relative to competing television stations, to attract viewing audiences that have certain demographic characteristics that advertisers are seeking to reach. The Federal Communications Commission ("FCC") also uses DMAs as geographic units with respect to its MVPD regulations.

Nexstar's and Media General's broadcast television stations in the DMA Markets generate almost all of their revenues by selling advertising to local and national advertisers who want to reach viewers present in those DMAs. Advertising placed on broadcast television stations in a DMA is aimed at reaching viewing audiences in that DMA, and television stations broadcasting outside that DMA do not provide effective access to these audiences.

Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Because of this unique combination of attributes, broadcast television spot advertising has no close substitute for a significant number of advertisers.

Television combines sight, sound, and motion, thereby creating a more memorable advertisement when compared to other types of advertising. For example, radio spots lack the visual impact of television advertising; and newspaper and billboard ads lack sound and motion, as do many internet search engine and Web site banner ads.

Broadcast television spot advertising also generally reaches the largest percentage of potential customers in a targeted geographic area and is therefore especially effective in introducing, establishing, and maintaining a product's image.

Spot advertising differs from network and syndicated television advertising, which are sold on a nationwide basis by major television networks and by producers of syndicated programs and are broadcast in every market area in which the network or syndicated program is aired. Spot advertising on cable and satellite networks distributed by MVPDs and internet-based video advertising also lacks the same reach as broadcast television spot advertising.

In addition, through information provided during individualized price negotiations, broadcast television stations can identify advertisers with strong preferences for using broadcast television spot advertising and charge different prices to those advertisers. Consequently, if there was a small but significant and non-transitory increase in the price ("SSNIP") of broadcast television spot advertising on broadcast television stations in the DMA Markets, advertisers would not reduce their purchases sufficiently to render the price increase unprofitable. Moreover, advertisers would not switch enough purchases of advertising time to television stations outside the DMA Markets, or to other media to render the price increase unprofitable.

ii. Retransmission Licensing Fees in the DMA Markets

The Complaint also alleges that the licensing to MVPDs in each of the DMA Markets of broadcast television programming for retransmission to subscribers constitutes a relevant market under Section 7 of the Clayton Act.

In each of the DMA Markets, Nexstar and Media General each own and operate broadcast television stations that are affiliated with one of the major broadcast television networks. Nexstar and Media General independently license the broadcast television programming from these stations to MVPDs to retransmit to the MVPDs' subscribers in each of the DMA Markets. MVPDs pay fees for these rights under a process known in the television industry and under FCC regulations as "retransmission consent." As a consequence of their retransmission agreements with MVPDs, Nexstar and Media General compete for viewers that are MVPD subscribers in each of the DMA Markets. Nexstar's and Media General's stations are at least partial substitutes for these viewers.

2. Harm to Competition in Each of the DMA Markets

The Complaint alleges that the proposed acquisition likely would substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and likely would have the following effects, among others:

(a) Competition in the sale of broadcast television spot advertising in each of the DMA Markets would be substantially lessened;

(b) actual and potential competition between Nexstar and Media General in the sale of broadcast television spot advertising in each of the DMA markets would be eliminated;

(c) prices for spot advertising on broadcast television stations in each of the DMA Markets would increase, and the quality of services would decline; and

(d) prices for retransmission licensing to MVPDs in each of the DMA Markets would increase.

The acquisition, by eliminating Media General as a separate competitor and combining its operations with those of Nexstar, would allow the combined entity to increase its market share of broadcast television viewers, spot advertising, and revenues in each of the DMA Markets. Specifically, the acquisition would give the merged company the following shares of broadcast television station gross advertising revenues in each DMA Market:

| DMA | Market share (percent) |
|---|---|
| Roanoke-Lynchburg, VA | 41 |
| Terre Haute, IN | 100 |
| Ft. Wayne, IN | 51 |
| Green Bay-Appleton, WI | 51 |
| Lafayette, LA | 53 |
| Quad Cities, IA/IL | 56 |

As alleged in the Complaint, Nexstar's acquisition of Media General would further concentrate the already highly concentrated broadcast television market in each of the DMA Markets. Using the Herfindahl-Hirschman Index ("HHI"), a standard measure of market concentration, the post-acquisition HHI in each of the DMA Markets would exceed 2,500 and the transaction would increase each DMA Market's HHI by over 200 points. As a result, the proposed acquisition is presumed likely to enhance market power under the Horizontal Merger Guidelines issued by the Department of Justice and Federal Trade Commission.

Moreover, the acquisition combines stations that are at least partial substitutes and vigorous competitors in a product market with limited alternatives. In each of the DMA Markets, Defendants have broadcast stations that are affiliated with the major national television networks: ABC, CBS, NBC, and FOX. Their respective affiliations with those networks, and their local news operations, provide Defendants' stations with a variety of competing programming options that are often each other's next-best or second-best substitutes for viewers and advertisers.

As alleged in the Complaint, advertisers benefit from Defendants' competition in the sale of broadcast television spot advertising in the DMA Markets. Advertisers purposefully spread their advertising dollars across numerous spot advertising suppliers to reach their marketing goals most efficiently. After the proposed acquisition, advertisers in each of the DMA Markets would likely find it more difficult to "buy around" Defendants' combined stations in response to higher advertising rates than they could have done before the proposed acquisition. Because a significant number of advertisers would likely be unable to reach their desired audiences as effectively unless they advertise on at least one station that Nexstar would control after the proposed acquisition, those advertisers' bargaining positions would be weaker, and the advertising rates they pay would likely increase.

The proposed merger would also diminish competition in the negotiation of retransmission agreements with MVPDs in the DMA Markets. The acquisition would provide Nexstar with the ability to threaten MVPDs in each of the DMA Markets with the simultaneous blackout of at least two major broadcast networks: its own network(s) and Media General's network(s). That threatened loss of programming, and the resulting diminution of an MVPD's subscribers and profits, would significantly strengthen Nexstar's bargaining position. Prior to the merger, an MVPD's failure to reach a retransmission agreement with Nexstar for a broadcast television station might result in a blackout of that station and threaten some subscriber loss for the MVPD. But because the MVPD would still be able to offer programming on Media General's major network affiliates, which are at least partial substitutes for Nexstar's affiliates, many MVPD subscribers would simply switch stations instead of cancelling their MVPD subscriptions. After the merger, an MVPD negotiating with Nexstar over a retransmission agreement could be faced with the prospect of a dual blackout of major broadcast networks (or worse), a result more likely to cause the MVPD to lose subscribers and therefore to accede to Nexstar's retransmission fee demands. For these reasons, the loss of competition between the Nexstar and Media General stations in each DMA Market would likely lead to an increase in retransmission fees in those markets and, because increased retransmission fees typically are passed on to consumers, higher MVPD subscription fees.

3. Entry

The Complaint alleges that entry or expansion in broadcast television spot advertising and the licensing of major broadcast television network programming to MVPDs for retransmission in each of the DMA Markets would not be timely, likely, or sufficient to prevent any anticompetitive effects.

With respect to broadcast television spot advertising, new entry is unlikely because any new station would require an FCC license, which is difficult to obtain. Even if a new station became operational, commercial success would come over a period of many years. Because the number of 30-second spots available at a station is generally fixed, other television stations in each of the DMA Markets could not readily increase their advertising capacity in response to a SSNIP by Nexstar.

With respect to retransmission licensing fees, new entry of major broadcast television network programming for MVPD retransmission in each of the DMA Markets is unlikely. The FCC regulates the ability of MVPDs to import non-local broadcast station signals into a local market. Consequently, in the event of a blackout of a major broadcast television network's signal, an MVPD typically would not be allowed to import the signal from a non-local affiliate of that broadcast television network. Thus, entry would not be timely, likely, or sufficient to deter Nexstar from engaging in anticompetitive price increases or other anticompetitive conduct after the proposed acquisition is consummated.

## III. Explanation of the Proposed Final Judgment

The divestiture requirement of the proposed Final Judgment will eliminate the likely anticompetitive effects of the acquisition in each of the DMA Markets by maintaining the Divestiture Stations as independent, economically viable competitors. The proposed Final Judgment requires Nexstar to divest the Divestiture Stations to the following Acquirers:

- WBAY–TV, located in Green Bay-Appleton, Wisconsin, and KWQC–TV, located in Quad Cities to Gray Television, Inc.;
- WSLS–TV, located in Roanoke-Lynchburg, Virginia to Graham Holdings Company;
- KADN–TV and KLAF–LD, both located in Lafayette, Louisiana to Bayou City Broadcasting Lafayette, Inc.; and
- WTHI–TV, located in Terre Haute, Indiana, and WFFT–TV, located in Ft. Wayne, Indiana to USA Television MidAmerica Holdings, LLC.

The United States has approved each of these Acquirers as suitable divestiture buyers. The United States required Nexstar to identify each Acquirer of a Divestiture Station in order to provide greater certainty and efficiency in the divestiture process. If, for any reason, Defendants are unable to complete the divestitures to one or more of these Acquirers, Defendants must divest the remaining Divestiture Stations to one or more alternative Acquirers approved by the United States in its sole discretion.

The "Divestiture Assets" are defined in Paragraph II.P of the proposed Final Judgment to include all assets, tangible or intangible, principally devoted to or necessary for the operation of the Divestiture Stations as viable, ongoing commercial broadcast television stations. With respect to each Divestiture Station, the divestiture will include assets sufficient to satisfy the United States, in its sole discretion, that such assets can and will be used to operate each station as a viable, ongoing, commercial television business. In addition, order to facilitate the continuous operations of the Divestiture Stations until the Acquirer(s) can provide such capabilities independently, Paragraph IV.G of the proposed Final Judgment provides that, at the option of an Acquirer, Defendants shall enter into a transition services agreement with the Acquirer for a period of up to six months.

To ensure that the Divestiture Stations are operated independently from Nexstar after the divestitures, Sections IV and XI of the proposed Final Judgment prohibit Defendants from entering into any agreements during the term of the Final Judgment that create a long-term relationship with or any entanglements that affect competition between Nexstar and an Acquirer of a Divestiture Station concerning the Divestiture Assets after the divestitures are completed. Examples of prohibited agreements include agreements during the term of the Final Judgment to reacquire any part of the Divestiture Assets; agreements to acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person; agreements to enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement; agreements to conduct other business negotiations jointly with the Acquirer(s) with respect to the Divestiture Assets; and agreements to provide financing or guarantees of financing with respect to the Divestiture Assets. The shared services agreement prohibition does not preclude Defendants from entering into an agreement pursuant to which an Acquirer can begin operating a Divestiture Station immediately after the Court's approval of the Hold Separate in this matter, so long as the agreement with the Acquirer expires upon the consummation of a final agreement to divest the Divestiture Assets to the Acquirer.

Defendants are required to take all steps reasonably necessary to accomplish the divestitures quickly and to cooperate with prospective purchasers. Pursuant to Paragraph IV.A of the proposed Final Judgment, divestiture of each of the Divestiture Stations must occur within 90 calendar days after the filing of the Complaint, or five calendar days after notice of the entry of the Final Judgment by the Court, whichever is later. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed 90 calendar days in total, and shall notify the Court in such circumstances.

Because transferring the broadcast license for each of the Divestiture Stations requires FCC approval, Paragraph IV.A of the proposed Final Judgment specifically requires Defendants to use their best efforts to obtain all necessary FCC approvals as expeditiously as possible. If applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirers of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to the divestiture of the Divestiture Assets for which no FCC order has issued until five calendar days after such order is issued.

In the event that Defendants do not accomplish all of the divestitures within the periods prescribed in the proposed Final Judgment, Section V of the proposed Final Judgment provides that the Court, upon application of the United States, will appoint a trustee selected by the United States to effect any remaining divestitures. If a trustee is appointed, the proposed Final Judgment provides that Nexstar will pay all costs and expenses of the trustee. The trustee's commission will be structured to provide an incentive for the trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the Court and the United States describing his or her efforts to accomplish the divestiture of any remaining stations. If the divestiture has not been accomplished after 6 months, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate, to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States, if any, will be filed with the Court. In addition, comments will be posted on the Antitrust Division's Web site and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to: Owen M. Kendler, Asst. Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 5th Street NW. Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and Defendants may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Nexstar's acquisition of Media General. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for the sale of broadcast television spot advertising and for the licensing of broadcast television programming to MVPDs for retransmission to MVPD subscribers in each of the DMA Markets. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461

(D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States* v. *InBev N.V./S.A.*, No. 08–1965 (JR), 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, at *3, (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable.").[1]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest.*" More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel*, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *United States* v. *Alcan Aluminum Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60. As this Court confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language wrote into the statute what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the Court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F.

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[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004) *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

[2] *Cf. BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass"). *See generally Microsoft*, 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

Supp. 2d at 11.[3] A court can make its public interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways,* 38 F. Supp. 3d at 76.

### VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September 2, 2016

Respectfully submitted,

*/s/Mark A. Merva* ____________________

Mark A. Merva* (D.C. Bar #451743),

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**Attorney of Record*

### Certificate of Service

I, Mark A. Merva, of the Antitrust Division of the United States Department of Justice, do hereby certify that true copies of the Complaint, Competitive Impact Statement, Hold Separate Stipulation and Order, Proposed Final Judgment, and Plaintiff's Explanation of Consent Decree Procedures were served this 2nd day of September, 2016, by email, to the following:

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*/s/Mark A. Merva* ____________________

Mark A. Merva.

### United States District Court for the District of Columbia

*United States of America,* Plaintiff, v. *NEXSTAR Broadcasting Group, Inc., and Media General, Inc.,* Defendants.

Case No.: 1:16-cv-01772
Judge: John D. Bates
Filed: 09/02/2016

### Proposed Final Judgment

WHEREAS, Plaintiff, the United States of America, filed its Complaint on September 2, 2016, and Defendant Nexstar Broadcasting Group, Inc. ("Nexstar") and Defendant Media General, Inc. ("Media General"), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by the Defendants to assure that competition is not substantially lessened;

AND WHEREAS, the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

### I. Jurisdiction

This Court has jurisdiction over the subject matter and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

### II. Definitions

As used in this Final Judgment:

A. "Nexstar" means Defendant Nexstar Broadcasting Group, Inc., a Delaware corporation headquartered in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. "Media General" means Defendant Media General, Inc., a Virginia corporation headquartered in Richmond, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. "Gray" means Gray Television, Inc., a Georgia corporation headquartered in Atlanta, Georgia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. "Graham" means Graham Holdings Company, a Delaware corporation headquartered in Arlington, Virginia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. "Bayou City" means Bayou City Broadcasting Lafayette, Inc., a privately held company headquartered in Houston, Texas, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including, but not limited to, Bayou City Broadcasting, LLC, and their directors, officers, managers, agents, and employees.

F. "USA TV" means USA Television MidAmerica Holdings, LLC, a privately held company headquartered in Atlanta, Georgia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including, but not limited to, MSouth Equity Partners, Heartland Media, LLC, and USA Television Holdings, LLC, and their directors, officers, managers, agents, and employees.

G. "Acquirer" means Gray, Graham, Bayou City, USA TV, or another entity to which Defendants divest any of the Divestiture Assets.

H. "DMA" means Designated Market Area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing in Television BIA Market Report 2016* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

I. "WBAY-TV" means the ABC-affiliated broadcast television station located in the Green Bay-Appleton, Wisconsin DMA owned by Defendant Media General.

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[3] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D.Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

J. "WSLS–TV" means the NBC-affiliated broadcast television station located in the Roanoke-Lynchburg, Virginia DMA owned by Defendant Media General.

K. "KADN–TV" means the FOX-affiliated broadcast television station located in the Lafayette, Louisiana DMA owned by Defendant Nexstar.

L. "KLAF–LD" means the NBC-affiliated broadcast television station located in the Lafayette, Louisiana DMA owned by Defendant Nexstar.

M. "WTHI–TV" means the CBS-affiliated broadcast television station located in the Terre Haute, Indiana DMA owned by Defendant Media General.

N. "WFFT–TV" means the FOX-affiliated broadcast television station located in the Ft. Wayne, Indiana DMA owned by Defendant Nexstar.

O. "KWQC–TV" means the NBC-affiliated broadcast television station located in the Davenport, Iowa/Rock Island-Moline, Illinois DMA owned by Defendant Media General.

P. "Divestiture Assets" means the WBAY–TV, WSLS–TV, KADN–TV, KLAF–LD, WTHI–TV, WFFT–TV, and KWQC–TV broadcast television stations and all assets, tangible or intangible, principally devoted to or necessary for the operation of the stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission ("FCC") and other government agencies related to the stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of Defendants; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the stations; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by Defendants in connection with the stations.

## III. Applicability

A. This Final Judgment applies to Defendants, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Sections IV and V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, they shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

## IV. Divestitures

A. Defendants are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter, or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to one or more Acquirers acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed ninety (90) calendar days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by Defendants or a trustee appointed pursuant to Section V of this Final Judgment, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirers of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of the Divestiture Assets for which no FCC order has issued until five (5) days after such order is issued. Defendants agree to use their best efforts to divest the Divestiture Assets and to obtain all necessary FCC approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this Final Judgment.

B. In the event that Defendants are attempting to divest assets related to WBAY–TV or KWQC–TV to an Acquirer other than Gray, or assets related to WSLS–TV to an Acquirer other than Graham, or assets related to KADN–TV or KLAF–LD to an Acquirer other than Bayou City, or assets related to WTHI–TV or WFFT–TV to an Acquirer other than USA TV:

(1) Defendants, in accomplishing the divestitures ordered by this Final Judgment, promptly shall make known, by usual and customary means, the availability of the Divestiture Assets to be divested;

(2) Defendants shall inform any person making an inquiry regarding a possible purchase of the relevant Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment;

(3) Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the relevant Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine; and

(4) Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide the Acquirer(s) and the United States information relating to the personnel involved in the operation and management of the relevant Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants shall not interfere with any negotiations by the Acquirer(s) to employ or contract with any employee of any Defendant whose primary responsibility relates to the operation or management of the relevant Divestiture Assets.

D. Defendants shall permit the prospective Acquirer(s) of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the relevant stations; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirers that each Divestiture Asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets.

G. At the option of the Acquirer(s), Defendants shall enter into a transition services agreement with the Acquirer(s) for a period of up to six (6) months to facilitate the continuous operations of the relevant Divestiture Assets until the Acquirer(s) can provide such capabilities independently. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to market conditions and shall be subject to the approval of the United States, in its sole discretion. Additionally, the United States in its sole discretion may approve one or more extensions of this agreement for a total of up to an additional six (6) months.

H. Defendants shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that, following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the Acquirers as part of a viable, ongoing commercial television broadcasting business. Divestiture of the Divestiture Assets may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable, and the divestiture of such assets will achieve the purposes of this Final Judgment and remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to Acquirer(s) that, in the United States' sole judgment, have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the commercial television broadcasting business; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between the Acquirer(s) and Defendants gives Defendants the ability unreasonably to raise the costs of the Acquirer(s), to lower the efficiency of the Acquirer(s), or otherwise to interfere in the ability of the Acquirer(s) to compete effectively.

## V. Apppointment of Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Section IV(A), Defendants shall notify the United States of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets that have not yet been divested.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the relevant Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably necessary in the trustee's judgment to assist in the divestiture. Any such investment bankers, attorneys, or other agents shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of Defendants pursuant to a written agreement, on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications. The trustee shall account for all monies derived from the sale of the relevant Divestiture Assets and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services yet unpaid and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets subject to sale by the trustee and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount. If the trustee and Defendants are unable to reach agreement on the trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within 14 calendar days of appointment of the trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The trustee shall, within three (3) business days of hiring any other professionals or agents, provide written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other agents retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States and, as appropriate, the Court setting forth the trustee's efforts to accomplish the relevant divestitures ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. Such report shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the relevant Divestiture Assets.

G. If the trustee has not accomplished the divestitures ordered under this Final Judgment within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court.

The trustee shall at the same time furnish such report to the United States which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. If the United States determines that the trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, it may recommend the Court appoint a substitute trustee.

## VI. Notice of Proposed Divestiture

A. Within two (2) business days following execution of a definitive divestiture agreement, Defendants or the trustee, whichever is then responsible for effecting the divestitures required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirers. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under Section V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

## VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

## VIII. Hold Separate

Until the divestitures required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

## IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, including efforts to secure FCC or other regulatory approvals, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitations on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

## X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as any Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copies or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

### XI. No Reacquisition and Other Prohibited Activities

Defendants may not (1) reacquire any part of the Divestiture Assets, (2) acquire any option to reacquire any part of the Divestiture Assets or to assign the Divestiture Assets to any other person, (3) enter into any local marketing agreement, joint sales agreement, other cooperative selling arrangement, or shared services agreement, or conduct other business negotiations jointly with the Acquirers with respect to the Divestiture Assets, or (4) provide financing or guarantees of financing with respect to the Divestiture Assets, during the term of this Final Judgment. The shared services prohibition does not preclude Defendants from continuing or entering into agreements in a form customarily used in the industry to (1) share news helicopters or (2) pool generic video footage that does not include recording a reporter or other on-air talent, and does not preclude Defendants from entering into any non-sales-related shared services agreement or transition services agreement that is approved in advance by the United States in its sole discretion.

### XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

### XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

### XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: ____________________

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

____________________

United States District Judge.

[FR Doc. 2016–22086 Filed 9–13–16; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Alcami Wisconsin Corporation

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on November 18, 2015, Alcami Wisconsin Corporation, W130 N10497 Washington Drive, Germantown, Wisconsin 53022 applied to be registered as a bulk manufacturer of alfentanil (9737), a basic class of controlled substance listed in schedule II.

The company plans to manufacture reference standards for distribution to their research and forensic customers.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22100 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Registration

**ACTION:** Notice of registration.

**SUMMARY:** Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as bulk manufacturers of various classes of controlled substances.

**SUPPLEMENTARY INFORMATION:** The companies listed below applied to be registered as manufacturers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted for these notices.

| Company | FR Docket | Published |
|---|---|---|
| Johnson Matthey, Inc | 81 FR 3475 | January 21, 2016. |
| Mallinckrodt, LLC | 81 FR 31959 | May 20, 2016. |
| American Radiolabeled Chemicals | 81 FR 31960 | May 20, 2016. |
| Rhodes Technologies | 81 FR 34371 | May 31, 2016. |

| Company | FR Docket | Published |
|---|---|---|
| Sigma Aldrich Research Biochemicals, Inc | 81 FR 38217 | June 13, 2016. |

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of these registrants to manufacture the applicable basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each of the company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the DEA has granted registration as a bulk manufacturer to the above listed persons.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22082 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Halo Pharmaceutical, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on July 27, 2016, Halo Pharmaceutical, Inc., 30 North Jefferson Road, Whippany, New Jersey 07981 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Dihydromorphine (9145) | I |
| Hydromorphone (9150) | II |

The company plans to manufacture Hydromorphone (9150) for distribution to its customers. Dihydromorphine (9145) is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22074 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: United States Pharmacopeial Convention

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before October 14, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before October 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on February 26, 2016, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methaqualone (2565) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |

| Controlled substance | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395) | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| Codeine-N-oxide (9053) | I |
| Difenoxin (9168) | I |
| Heroin (9200) | I |
| Morphine-N-oxide (9307) | I |
| Norlevorphanol (9634) | I |
| Methamphetamine (1105) | II |
| Phenmetrazine (1631) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Phencyclidine (7471) | II |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333) | II |
| Phenylacetone (8501) | II |
| Alphaprodine (9010) | II |
| Anileridine (9020) | II |
| Cocaine (9041) | II |
| Dihydrocodeine (9120) | II |
| Diphenoxylate (9170) | II |
| Levomethorphan (9210) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273) | II |
| Thebaine (9333) | II |
| Noroxymorphone (9668) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |

The company plans to import the listed controlled substances in bulk powder form from foreign sources for the manufacture of analytical reference standards for sale to their customers.

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under to 21 U.S.C. 952(a)(2). Authorization will not extend to the import of FDA approved or non-approved finished dosage forms for commercial sale.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22079 Filed 9–13–16; 8:45 am]

BILLING CODE 4410–09–P

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## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: Insys Manufacturing LLC

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on June 29, 2016, Insys Manufacturing LLC, 811 Paloma Drive, Suite C, Round Rock, Texas 78665–2402 applied to be registered as a bulk manufacturer the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |

The company plans to manufacture bulk synthetic active pharmaceutical ingredients (APIs) for product development and distribution to its customers. No other activity for these drug codes are authorized for this registration.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22075 Filed 9–13–16; 8:45 am]

BILLING CODE 4410–09–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Cambrex Charles City

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before October 14, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before October 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and request for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on May 5, 2016, Cambrex Charles City, 1205 11th Street, Charles City, Iowa 50616–3466 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) (8333). | II |
| Phenylacetone (8501) | II |
| Coca Leaves (9040) | II |
| Opium, raw (9600) | II |
| Alfentanil (9737) | II |
| Poppy Straw Concentrate (9670) | II |

The company plans to import the listed controlled substances for internal use, and to manufacture bulk intermediates for sale to its customers.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22077 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Registration

**ACTION:** Notice of registration.

**SUMMARY:** Registrants listed below have applied for and been granted registration by the Drug Enforcement Administration (DEA) as importers of various classes of schedule I or II controlled substances.

**SUPPLEMENTARY INFORMATION:** The companies listed below applied to be registered as importers of various basic classes of controlled substances. Information on previously published notices is listed in the table below. No comments or objections were submitted and no requests for hearing were submitted for these notices.

| Company | FR docket | Published |
|---|---|---|
| Wildlife Laboratories, Inc | 81 FR 34372 | May 31, 2016. |
| Janssen Pharmaceutical, Inc | 81 FR 45306 | July 13, 2016. |
| Noramco, Inc | 81 FR 45307 | July 13, 2016. |

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of the listed registrants to import the applicable basic classes of schedule I or II controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated each company's maintenance of effective controls against diversion by inspecting and testing each company's physical security systems, verifying each company's compliance with state and local laws, and reviewing each company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the DEA has granted registration as importers for schedule I or II controlled substances to the above listed persons.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22083 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Bulk Manufacturer of Controlled Substances Application: AMPAC Fine Chemicals LLC

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.33(a) on or before November 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.33(a), this is notice that on June 30, 2016, AMPAC Fine Chemicals LLC, Highway 50 and Hazel Avenue, Building 05001, Rancho Cordova, California 95670 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Methylphenidate (1724) | II |
| Levorphanol (9220) | II |
| Thebaine (9333) | II |
| Tapentadol (9780) | II |

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22078 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–392]**

### Importer of Controlled Substances Application: Sigma-Aldrich International GMBH-Sigma Aldrich Company LLC

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration in accordance with 21 CFR 1301.34(a) on or before October 14, 2016. Such persons may also file a written request for a hearing on the application pursuant to 21 CFR 1301.43 on or before October 14, 2016.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152. Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417, (January 25, 2007).

**SUPPLEMENTARY INFORMATION:** The Attorney General has delegated her authority under the Controlled Substances Act to the Administrator of the Drug Enforcement Administration (DEA), 28 CFR 0.100(b). Authority to exercise all necessary functions with respect to the promulgation and implementation of 21 CFR part 1301, incident to the registration of manufacturers, distributors, dispensers, importers, and exporters of controlled substances (other than final orders in connection with suspension, denial, or revocation of registration) has been redelegated to the Deputy Assistant Administrator of the DEA Office of Diversion Control ("Deputy Assistant Administrator") pursuant to section 7 of 28 CFR part 0, appendix to subpart R.

In accordance with 21 CFR 1301.34(a), this is notice that on January 19, 2016, Sigma-Aldrich International GMBH, Sigma Aldrich Co. LLC, 3500 Dekalb Street, Saint Louis, Missouri 63118 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| Mephedrone (4-Methyl-N-methylcathinone (1248) | I |
| N-Ethylamphetamine (1475) | I |
| Aminorex (1585) | I |
| Gamma Hydroxybutyric Acid (2010) | I |
| Methaqualone (2565) | I |
| Alpha-ethyltryptamine (7249) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391) | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392) | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395) I. | |
| 2,5-Dimethoxyamphetamine (7396) | I |
| 3,4-Methylenedioxyamphetamine (7400) | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7402) | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404) | I |
| 3,4-Methylenedioxymethamphetamine (7405) | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine (7470) | I |
| N-Benzylpiperazine (7493) | I |
| MDPV (3,4-Methylenedioxypyrovalerone) (7535) | I |
| Butylone (7541) | I |
| Heroin (9200) | I |

| Controlled substance | Schedule |
|---|---|
| Normorphine (9313) | I |
| Etonitazene (9624) | I |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| Glutethimide (2550) | II |
| Nabilone (7379) | II |
| Phencyclidine (7471) | II |
| Diphenoxylate (9170) | II |
| Ecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Thebaine (9333) | II |
| Opium, powdered (9639) | II |
| Levo-alphacetylmethadol (9648) | II |

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

In reference to drug codes 7360 (marihuana) and 7370 (THC), the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activity for these drug codes is authorized for this registration.

Dated: September 7, 2016.

**Louis J. Milione,**

*Deputy Assistant Administrator.*

[FR Doc. 2016–22076 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

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## DEPARTMENT OF JUSTICE

**[OMB Number 1117–0042]**

## Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection; National Clandestine Laboratory Seizure Report

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** 60-day notice.

**SUMMARY:** The Department of Justice (DOJ), Drug Enforcement Administration, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until November 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Catherine J. Cmiel-Acevido, Lead IT Specialist, or Jesus Oswaldo "Waldo" Contreras, IT Specialist, El Paso Intelligence Center, Drug Enforcement Administration, 11339 SSG Sims Blvd., El Paso, TX 79918.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1 *Type of Information Collection:* Extension of a currently approved collection.

2 *The Title of the Form/Collection:* National Clandestine Laboratory Seizure Report.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* EPIC–143.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:* State, Local or Tribal government law enforcement agencies. Records reported in the National Seizure System include clandestine laboratory seizure information managed by the El Paso Intelligence Center, Drug Enforcement Administration, and available to other law enforcement agencies in the discharge of their law enforcement duties and responsibilities.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that approximately 7930 respondents will complete the survey within approximately one hour.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 7930 hours. It is estimated that respondents will take one hour to complete the survey. In order to calculate the public burden for the survey, EPIC multiplied one hour by 7930 which equals 7930 total annual burden hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3E.405B, Washington, DC 20530.

Dated: September 8, 2016.

**Jerri Murray,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2016–22012 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

## Notice of Lodging Proposed Consent Decree

In accordance with Departmental policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Bridlewood Development, LLC,* Civil No. 2:16–cv–03031–PMD, was lodged with the United States District Court for the District of South Carolina on September 8, 2016.

The proposed Consent Decree concerns a complaint filed by the United States against Defendants Bridlewood Development, LLC, Whitehorse I, LLC, Gorden Timmons, and Edward Scott, pursuant to Sections 301, 309, and 404 of the Clean Water Act, 33 U.S.C. 1311, 1319, and 1344, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States in Dorchester County, South Carolina. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore wetlands, to preserve wetlands, and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Andrew J. Doyle, Senior Attorney, United States Department of Justice, Environment and Natural Resources Division, Post Office Box 7611, Washington, DC 20044, and refer to *U.S.* v. *Bridlewood Development, LLC, et al.,* DJ #90–5–1–4–20280.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, 85 Broad Street, Charleston, South Carolina 29401. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/consent-decrees.*

**Cherie L. Rogers,**

*Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.*

[FR Doc. 2016–22072 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–15–P**

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## DEPARTMENT OF JUSTICE

## Office of Justice Programs

**[[OJP (NIJ) Docket No. 1725]**

## Discontinuing the Metallic Handcuffs Compliance Testing Program and Request for Public Comment on Draft Minimum Scheme Requirements to Certify Criminal Justice Restraints Described in NIJ Standard 1001.00

**AGENCY:** National Institute of Justice, Office of Justice Programs, Justice.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Justice (NIJ) announces that it is discontinuing the metallic handcuffs Compliance Testing Program (CTP). The program is closed to new submissions effective upon publication of this notice. The metallic handcuffs Compliant Products List (CPL) will remain published for an additional year until September 14, 2017, after which time it will be taken down. In place of the CTP, NIJ has been working with conformity assessment bodies to develop acceptable criteria by which NIJ would recognize a product certification scheme operated by a certification body in the private sector. NIJ seeks feedback from the public on draft minimum requirements that a product certification scheme must contain for the certification of restraints described in NIJ Standard 1001.00, *Criminal Justice Restraints Standard.* The draft minimum scheme requirements are found in the Supplementary Information below, as well as in the document found here: *http://www.nij.gov/restraints.* NIJ anticipates recognizing certification programs that meet or exceed the minimum scheme requirements. NIJ also anticipates provisionally recognizing the certification program established by the Safety Equipment Institute (SEI), which is accredited by the American National Standards Institute (ANSI) to ISO/IEC 17065 *Conformity assessment—Requirements for bodies certifying products, processes and services.* SEI added NIJ Standard 1001.00 to the scope of its accreditation, with an effective date of October 7, 2015 valid through June 1, 2017. Further guidance on recognition of this certification program or others will be published in the **Federal Register** at a future date, to be determined. NIJ Standard 1001.00, *Criminal Justice Restraints Standard,* was published in the **Federal Register** on November 19, 2014, and may be found here: *https://federalregister.gov/a/2014-27367.*

**DATES:** Comments must be received by 5 p.m. Eastern Time on October 14, 2016.

*How to Respond and What to Include:* The draft minimum scheme requirements are found in the Supplementary Information below, or in the document found here: *http://www.nij.gov/restraints.* To submit comments, please send an email to the point of contact listed below, and provide contact information with the submission of comments.

**FOR FURTHER INFORMATION CONTACT:** Mark Greene, Policy and Standards Division Director, Office of Science and Technology, National Institute of Justice, 810 7th Street NW., Washington, DC 20531; telephone number: (202) 307–3384; email address: *mark.greene2@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** The following describes the minimum requirements that a product certification scheme must contain for the certification of restraints described in NIJ Standard 1001.00, *Criminal Justice Restraints Standard.* A product certification scheme includes the rules, procedures, and management required for carrying out product certification, which involves the assessment and attestation by an impartial third party that fulfilment of specified requirements has been demonstrated by a product. This is discussed further in ISO/IEC 17067, *Conformity assessment — Fundamentals of product certification and guidelines for product certification schemes.*

The following is intended primarily for those considering becoming certification scheme owners for the purpose of certifying restraints, in order to provide greater confidence to the criminal justice end user community that the restraints products conform to the requirements specified in NIJ Standard 1001.00. It includes minimum reasonable expectations that a certification body should meet in order to operate a certification program for restraints.

The following is also intended for accreditation bodies that accredit certification bodies which may be considering certifying restraints to a scheme that includes laboratory testing of products to NIJ Standard 1001.00.

This document uses the following in accordance with international standards:

—"shall" indicates a requirement;
—"should" indicates a recommendation;
—"may" indicates a permission;
—"can" indicates a possibility or a capability.

Nothing in the following is intended to create any legal or procedural rights enforceable against the United States. Moreover, nothing in the following creates any obligation for conformity assessment bodies to follow or adopt this voluntary standard, nor does it create any obligation for manufacturers, suppliers, law enforcement agencies, or others to follow or adopt voluntary NIJ equipment standards.

1 Scope

1.1 This document describes the minimum requirements that a product certification scheme must contain for the certification of restraints described in NIJ Standard 1001.00, *Criminal Justice Restraints Standard.*

1.2 This document includes provisions for NIJ to file urgent complaints with a certification body regarding products it certifies to protect criminal justice end users of restraints products, such as police officers and correctional officers, if NIJ believes that a hazardous condition exists.

1.3 This document includes provisions for NIJ to file urgent complaints with an accreditation body regarding conformity assessment bodies it accredits in the certification scheme to protect criminal justice end users of restraints products, such as police officers and correctional officers, if NIJ believes that a hazardous condition exists.

2 Normative References

ISO/IEC 17000, *Conformity assessment—Vocabulary and general principles*

ISO/IEC 17025, *General requirements for the competence of testing and calibration laboratories*

ISO/IEC 17030, *Conformity assessment—General requirements for third-party marks of conformity*

ISO/IEC 17065, *Conformity assessment—Requirements for bodies certifying products, processes and services*

ISO/IEC 17067, *Conformity assessment—Fundamentals of product certification and guidelines for product certification schemes*

ISO/IEC Directives, Part 2, *Principles and rules for the structure and drafting of ISO and IEC documents,* Seventh edition, 2016

NIJ Standard 1001.00, *Criminal Justice Restraints Standard*

3 Terms and Definitions

For the purposes of this document, the terms and definitions given in ISO/IEC 17000, ISO/IEC 17065, ISO/IEC 17067, and NIJ 1001.00 apply.

4 Scheme Requirements

4.1 The product certification scheme shall follow the guidelines in ISO/IEC 17067.

4.1.1 The product certification scheme shall be of scheme type 5 as described in 5.3.7 in ISO/IEC 17067.

4.1.2 The scheme shall include provisions for the certification body to assess the client's management system and quality assurance processes upon initial certification and during surveillance.

4.1.3 The certification body shall issue a mark of conformity to be displayed on certified products in accordance with ISO/IEC 17030.

4.2 Conformity assessment bodies shall be accredited.

4.2.1 Certification bodies shall be accredited to ISO/IEC 17065 by an accreditation body that is a signatory to the International Accreditation Forum (IAF) Multilateral Recognition Arrangement (MLA).

4.2.2 Certification bodies shall have a scope of accreditation to include NIJ 1001.00.

4.2.3 Testing laboratories shall be accredited to ISO/IEC 17025 by an accreditation body that is a signatory to the IAF MLA.

4.2.4 Testing laboratories shall have a scope of accreditation to include NIJ 1001.00.

4.3 NIJ may request information from the certification body.

4.3.1 NIJ may request in writing directly from the certification body a list of all actions taken against specified current or previously certified products, such as termination, reduction, suspension, or withdrawal of certification.

4.3.2 The certification body shall provide in writing the information requested by NIJ in 4.3.1 by the next working day.

4.4 NIJ may bring urgent complaints to the certification body.

4.4.1 NIJ may bring urgent complaints regarding certified products, or products believed to be certified, directly to the certification body if NIJ believes that a hazardous condition exists.

4.4.2 Should NIJ bring an urgent complaint to the attention of the certification body, NIJ shall articulate the complaint in writing.

4.4.3 The certification body shall provide an expedited response in writing to NIJ within five (5) working days, articulating how it plans to proceed with the urgent complaint, including actions it may take to determine the validity of the complaint, and an estimated timeline to determine the validity of the complaint.

4.5 NIJ may request information from accreditation bodies.

4.5.1 NIJ may request in writing directly from an accreditation body a list of all actions taken against a conformity assessment body that it accredits in the certification scheme, such as termination, reduction, suspension, or withdrawal of certification.

4.5.2 The accreditation body shall provide in writing the information NIJ requested in 4.5.1 within five (5) working days.

4.6 NIJ may bring urgent complaints to accreditation bodies.

4.6.1 NIJ may bring urgent complaints directly to an accreditation body regarding conformity assessment bodies that it accredits in the certification scheme if NIJ believes a hazardous condition exists.

4.6.2 Should NIJ bring an urgent complaint to the attention of an accreditation body, NIJ shall articulate the complaint in writing.

4.6.3 The accreditation body shall provide an expedited response in writing to NIJ within five (5) working days, articulating how it plans to proceed with the urgent complaint, including actions it may take to determine the validity of the complaint and an estimated timeline to determine the validity of the complaint.

4.7 Accreditation bodies shall notify NIJ of any changes in the accreditation status or scope of accreditation of any conformity assessment bodies in the certification scheme.

4.7.1 Changes in accreditation status include suspension, withdrawal, or reduction of the scope of accreditation.

4.7.2 The accreditation body shall notify NIJ in writing within five (5) working days after such action is taken.

**Nancy Rodriguez,**
*Director, National Institute of Justice.*

[FR Doc. 2016–22057 Filed 9–13–16; 8:45 am]

**BILLING CODE 4410–18–P**

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2007–0039]**

## Intertek Testing Services NA, Inc.: Application for Expansion of Recognition and Proposed Modification to the NRTL Program's List of Appropriate Test Standards

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Intertek Testing Services NA, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application. Additionally, this notice proposes to add a new recognized testing standard to the NRTL Program's List of Appropriate Test Standards.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 29, 2016.

**ADDRESSES:** Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2007–0039, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2007–0039). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before September 29, 2016 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Intertek Testing Services NA, Inc. (ITSNA), is applying for expansion of its current recognition as an NRTL. ITSNA requests the addition of thirty (30) test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including ITSNA, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

ITSNA currently has fourteen facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Intertek Testing Services NA, Inc., 545 East Algonquin Road, Suite F, Arlington Heights, Illinois 60005. A complete list of ITSNA's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/its.html.*

## II. General Background on the Application

ITSNA submitted an application, dated June 3, 2015 (OSHA–2007–0039–0020), to expand its recognition to include 30 additional test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information and preliminarily determined that OSHA should grant the application to expand ITSNA's recognition to include twenty-eight (28) of the 30 requested standards. OSHA did not perform any on-site reviews in relation to this application.

Table 1 below lists the appropriate test standards found in ITSNA's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN ITSNA'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| ISA 60079–0 | Explosive Atmospheres—Part 0: Equipment—General Requirements. |
| UL 60079–0 | Explosive Atmospheres—Part 0: Equipment—General Requirements. |
| ISA 61241–0 | Electrical Apparatus for Use in Zone 20, Zone 21, and Zone 22 Hazardous (Classified) Locations—General Requirements. |
| ISA 60079–1 | Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d". |
| UL 60079–1 | Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d". |
| ISA 60079–2 | Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures "p". |
| UL 60079–2 | Explosive Atmospheres—Part 2: Equipment Protection by Pressurized Enclosures "p". |
| NFPA 496 | Purged and Pressurized Enclosures for Electrical Equipment. |
| ISA 61241–2 | Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Pressurication "pD". |
| ISA 60079–5 | Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling "q". |
| UL 60079–5 | Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling "q". |
| ISA 60079–6 | Explosive Atmospheres—Part 6: Equipment Protection by Liquid Immersion "o". |
| UL 60079–6 | Explosive Atmospheres—Part 6: Equipment Protection by Liquid Immersion "o". |
| ISA 60079–7 | Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "e". |
| UL 60079–7 | Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "e". |
| ISA 60079–11 | Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i". |
| UL 60079–11 | Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i". |
| ISA 60079–25 * | Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems. |
| ISA 60079–28 | Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation, Edition 1.1. |
| ISA 61241–11 | Electrical Apparatus for Use in Zone 20, Zone 21, and Zone 22 Hazardous (Classified) Locations—Protection by Intrinsic Safety "iD". |
| ISA 60079–15 | Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n" (Edition 4). |
| UL 60079–15 | Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n". |
| ISA 60079–18 | Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation "m". |
| UL 60079–18 | Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation "m". |
| ISA 61241–18 | Electrical Apparatus for Use in Zone 20, Zone 21, and Zone 22 Hazardous (Classified) Locations—Protection by Encapsulation "mD". |
| ISA 60079–26 | Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations. |
| ISA 60079–31 | Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t". |
| ISA 61241–1 | Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Enclosures "tD". |

* Represents the standard that OSHA proposes to add to the NRTL Program's List of Appropriate Test Standards.

## III. Proposal To Add New Test Standard to the NRTL Program's List of Appropriate Test Standards

Periodically, OSHA will propose to add new test standards to the NRTL Program's List of Appropriate Test Standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the Agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by an NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards to consider adding to the NRTL Program's List of Appropriate Standards by: (1) Monitoring notifications issued by certain SDOs; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scopes of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers or it covers a type of product that no standard previously covered.

In this notice, OSHA proposes to add a new test standard to the NRTL Program's List of Appropriate Test Standards. Table 1, below, lists the test standard that is new to the NRTL Program. OSHA preliminarily determined that this test standard is an appropriate test standard and proposes to include it in the NRTL Program's List of Appropriate Test Standards. OSHA seeks public comment on this preliminary determination.

TABLE 1—TEST STANDARDS OSHA IS PROPOSING TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

| Test standard | Test standard title |
|---|---|
| UL 60079–25 | Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems. |

## IV. Preliminary Findings on the Application

ITSNA submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that ITSNA can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these 28 test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of ITSNA's application.

OSHA welcomes public comment as to whether ITSNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments sent in response to this notice should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2007–0039.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant ITSNA's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

## Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 9, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016–22085 Filed 9–13–16; 8:45 am]

BILLING CODE 4510–26–P

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## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

**[Docket No. OSHA–2009–0025]**

## Underwriters Laboratories, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of Underwriters Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the Agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 29, 2016.

**ADDRESSES:** Submit comments by any of the following methods:

1. *Electronically:* Submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

2. *Facsimile:* If submissions, including attachments, are not longer than 10 pages, commenters may fax them to the OSHA Docket Office at (202) 693–1648.

3. *Regular or express mail, hand delivery, or messenger (courier) service:* Submit comments, requests, and any attachments to the OSHA Docket Office, Docket No. OSHA–2009–0025, Technical Data Center, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–2625, Washington, DC 20210; telephone: (202) 693–2350 (TTY number: (877) 889–5627). Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m.–4:45 p.m., e.t.

4. *Instructions:* All submissions must include the Agency name and the OSHA docket number (OSHA–2009–0025). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

5. *Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

6. *Extension of comment period:* Submit requests for an extension of the comment period on or before September 29, 2016 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Notice of the Application for Expansion

The Occupational Safety and Health Administration is providing notice that Underwriters Laboratories, Inc. (UL), is applying for expansion of its current recognition as an NRTL. UL requests the addition of twenty-five (25) test standards to its NRTL scope of recognition.

OSHA recognition of an NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The Agency processes applications by an NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational Web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA Web site at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL currently has fifteen facilities (sites) recognized by OSHA for product testing and certification, with its headquarters located at: Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062. A complete list of UL's scope of recognition is available at *https://www.osha.gov/dts/otpca/nrtl/ul.html.*

## II. General Background on the Application

UL submitted an application, dated June 30, 2015 (OSHA–2009–0025–0017), to expand its recognition to include twenty-five additional test standards. OSHA staff performed detailed analysis of the application packet and reviewed other pertinent information. OSHA performed an on-site review in relation to this application on April 4–5, 2016.

Table 1 below lists the appropriate test standards found in UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

| Test standard | Test standard title |
|---|---|
| ISA 60079–0 | Explosive Atmospheres—Part 0: Equipment—General Requirements. |
| ISA 60079–1 | Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d". |
| ISA 60079–2 | Explosive Atmospheres—Part 2: Equipment Protection by Flameproof Enclosures "p". |
| ISA 60079–5 | Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling "q". |
| ISA 60079–6 | Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion "o". |
| ISA 60079–7 | Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "e". |
| ISA 60079–11 | Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i". |
| ISA 60079–15 | Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n". |
| ISA 60079–18 | Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation "m". |
| ISA 60079–26 | Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations. |
| ISA 60079–28 | Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation, Edition 1.1. |
| ISA 60079–31 | Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure "t". |
| ISA 61241–0 | Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—General Requirements. |
| ISA 61241–1 | Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Enclosures "tD". |
| ISA 61241–2 | Electrical Apparatus for Use in Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Pressurization "pD". |
| ISA 61241–11 | Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Intrinsic Safety "iD". |
| ISA 61241–18 | Electrical Apparatus for Use in Zone 20, Zone 21 and Zone 22 Hazardous (Classified) Locations—Protection by Encapsulation "mD". |
| ANSI/UL 60079–0. | Explosive Atmospheres—Part 0: Equipment—General Requirements. |
| ANSI/UL 60079–1. | Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures "d". |
| ANSI/UL 60079–5. | Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling "q". |
| ANSI/UL 60079–6. | Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion "o". |
| ANSI/UL 60079–7. | Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety "o". |
| ANSI/UL 60079–11. | Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety "i". |
| ANSI/UL 60079–15. | Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection "n". |
| ANSI/UL 60079–18. | Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation "m". |

### III. Preliminary Findings on the Application

UL submitted an acceptable application for expansion of its scope of recognition. OSHA's review of the application file, and pertinent documentation, indicate that UL can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these twenty-five test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the request is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. These materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2009–0025.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will recommend to the Assistant Secretary for Occupational Safety and Health whether to grant UL's application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of its final decision in the **Federal Register**.

### Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on September 9, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2016–22084 Filed 9–13–16; 8:45 am]

BILLING CODE 4510–26–P

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## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, October 6, 2016, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to take action on the minutes of a previous Board meeting; to provide the Chairperson's report; to provide the Chief Executive Officer's report; to provide committee reports; to provide partners' reports; to receive public feedback on priorities; and to receive public comment in accordance with the Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to September 29, 2016.

**DATES:** The meeting will begin at 6:30 p.m. on Thursday, October 6, 2016.

**ADDRESSES:** The meeting will be held at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco.

**FOR FURTHER INFORMATION CONTACT:** Andrea Andersen, Acting General Counsel, the Presidio Trust, 103 Montgomery Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: September 8, 2016.

**Andrea M. Andersen,**

*Acting General Counsel.*

[FR Doc. 2016–22052 Filed 9–13–16; 8:45 am]

BILLING CODE 4310–4R–P

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78784; File No. SR–Phlx–2016–91]

### Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Exchange's Pricing Schedule Under Section VIII With Respect To Execution and Routing of Orders in Securities Priced at $1 or More Per Share

September 8, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, NASDAQ PHLX LLC ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule under Section VIII, entitled "NASDAQ PSX FEES," ("Pricing Schedule") with respect to execution and routing of orders in securities priced at $1 or more per share.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on September 1, 2016. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add a credit tier for order execution and routing applicable to the use of the order execution and routing services of the NASDAQ PSX System ("PSX System") by member organizations for all securities traded at $1 or more per share.

Specifically, the Exchange proposes to amend its Pricing Schedule to include a new credit tier for providing liquidity through the PSX System for displayed quotes/orders. The new credit tier will be for $0.0027 per share executed for displayed quotes/orders entered by a member organization that provides and accesses 0.15% or more of consolidated volume ("Consolidated Volume") during the month.

The proposed new credit tier is positioned to fall between two similar existing credit tiers. It will provide a higher credit, $0.0027 per share executed, than an existing credit tier, $0.0025 per share executed, but it also has a higher threshold of required activity. The new credit tier requires a member to provide and access 0.15% of Consolidated Volume during the month versus the existing 0.05% for the $0.0025 credit tier.

Alternatively the new credit tier will provide a lower credit than the existing $0.0029 per share executed credit tier, but also has a lower required Consolidated Volume threshold. The $0.0029 per share executed credit tier requires a member to provide and access 0.25% of Consolidated Volume during the month, while the new credit tier only requires a member to provide and access 0.15% of Consolidated Volume during the month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6 of the Act,[3] in general, and with section 6(b)(4) and 6(b)(5) of the Act,[4] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed rule change to the credit tiers under the Exchange's Pricing Schedule, section VIII, are reflective of the Exchange's ongoing efforts to use pricing incentive programs to attract order flow to the Exchange and improve market quality. The goal of these pricing incentives is to provide meaningful incentives for members to increase their participation on the Exchange.

The Exchange believes that the new credit tier for displayed quotes/orders for a member organization providing liquidity through the PSX System of $0.0027 per share executed in The NASDAQ Stock Market LLC ("Nasdaq")—listed securities, securities listed on the New York Stock Exchange ("NYSE"), and securities listed on exchanges other than Nasdaq and NYSE is reasonable because it is consistent with other credits that the Exchange provides to members that access and/or provide liquidity. As a general principle the Exchange chooses to offer credits to members in return for market improving behavior. The various credits the Exchange provides for members require them to significantly contribute to market quality by accessing and/or providing certain levels of Consolidated Volume. The proposed credit tier will be provided to members that provide and access liquidity in all securities of 0.15% or more of Consolidated Volume during the month.

The Exchange also believes that this proposed rule change is consistent with an equitable allocation of fees and are not unfairly discriminatory because the new credit tier for non-displayed orders/quotes is uniformly available to all members and affects all members equally and in the same way. Additionally, the proposed new credit tier will further encourage market participant activity and will also support price discovery and liquidity provision.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[5] The Exchange notes that it operates in a highly competitive market in which market participants can readily favor dozens of different competing exchanges and alternative trading systems if they deem charges at a particular venue to be excessive, or credit opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its charges and credits to remain competitive with other exchanges. Because competitors are free to modify their own charges and credits in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which changes to charges and credits in this market may impose any burden on competition is extremely limited.

In this instance, the proposed new credit tier for member organizations entering orders in the PSX System for displayed orders that provide liquidity does not impose a burden on competition because Exchange membership is optional and is the subject of competition from other exchanges. These adjustments are reflective of the intent to increase the order flow on the Exchange. For these reasons, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, the Exchange does not believe that the proposed rule change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

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[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4) and (5).

[5] 15 U.S.C. 78f(b)(8).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–91 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–91. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–91, and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22025 Filed 9–13–16; 8:45 am]

BILLING CODE 8011–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78785; File No. SR–C2–2016–017]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule To Amend the Fees Schedule

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2016, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule. Particularly, the Exchange proposes to amend Taker fees for simple, non-complex orders in all equity, multiply-listed index, ETF and ETN options classes (except Russell 2000 Index ("RUT")) in both penny and non-penny classes. The Taker fees would be increased by $0.02 per contract in penny classes and by $0.02 for customers ("C" origin code) and by $0.05 for all other origin codes in non-penny classes. Specifically, the Exchange proposes to adopt the following rates. Listed rates are per contract.

| | Penny classes | | Non-penny | |
|---|---|---|---|---|
| | Current | Proposed | Current | Proposed |
| Public Customer | .47 | .49 | .83 | .85 |
| C2 Market-Maker | .48 | .50 | .85 | .90 |
| All Other Origins (Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) | .48 | .50 | .88 | .93 |
| Trades on the Open | ($0.00) | ($0.00) | ($0.00) | ($0.00) |

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The Exchange notes that the proposed Taker fee amounts are the same as, or in line with, the amounts currently assessed for simple, non-complex orders in equity, multiply-listed index, ETF and ETN options classes assessed at other Exchanges.[3]

### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that the proposed increase to Taker fees for simple, non-complex orders in all equity, multiply-listed index, ETF and ETN options classes (except RUT) are reasonable because the proposed fee amounts are the same as, or in line with, the amounts assessed for similar transactions at other exchanges.[8]

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees to Public Customers as compared to other market participants because Public Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, Public Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Additionally, the proposed fee change applying to Public Customers will be applied equally to all Public Customers.

The Exchange believes that it is equitable and not unfairly discriminatory to assess lower fees in non-penny classes to Market-Makers as compared to other market participants other than Public Customers because Market-Makers, unlike other C2 market participants, take on a number of obligations, including quoting obligations, that other market participants do not have. Further, these lower fees offered to Market-Makers are intended to incent Market-Makers to quote and trade more on the Exchange, thereby providing more trading opportunities for all market participants. Finally, all fee amounts listed as applying to Market-Makers will be applied equally to all Market-Makers.

Similarly, the Exchange believes it is equitable and not unfairly discriminatory to assess higher fees to all other origins (*i.e.,* Professional Customer, Firm, Broker/Dealer, non-C2 Market-Maker, JBO, etc.) in non-penny classes. Particularly, the Exchange notes that it believes it's equitable and not unfairly discriminatory to assess a higher fee than it does of Market-Makers, because these market participants do not have the same obligations, such as quoting, as Market-Makers do. The Exchange believes it's equitable and not unfairly discriminatory to assess a higher fee than it does to Public Customers, because, as described above, there is a history of providing preferential pricing to Public Customers as Public Customer liquidity benefits all market participants by providing more trading opportunities. The Exchange notes that the proposed fee amounts listed for non-penny classes will also be applied equally to each of these market participants (*i.e.,* Professional Customers, Firms, Broker/Dealers, non-C2 Market-Makers, JBOs, etc. will be assessed the same amount). It should also be noted that all fee amounts described herein are intended to attract greater order flow to the Exchange, which should therefore serve to benefit all Exchange market participants.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

C2 does not believe that the proposed rule changes will impose any burden on competition that are not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. The Exchange believes this proposal will not cause an unnecessary burden on intermarket competition because the proposed Taker fee amounts are similar to fees assessed at other exchanges for similar transactions.[9] To the extent that the proposed changes make C2 a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become C2 market participants.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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[3] *See e.g.,* NYSE Arca Options Fee Schedule, which lists, for electronic executions in Penny Pilot issues, (1) Customer Taker fee of $0.49, (2) Market-Maker Taker fee of $0.50, and (3) Firm and Broker Dealer Taker fee of $0.50; and for electronic executions in non-Penny Pilot issues, (1) Customer Taker fee of $0.85, (2) Market-Maker Taker fee of $1.08, and (3) Firm and Broker Taker fee of $1.08.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

[7] 15 U.S.C. 78f(b)(4).

[8] *See* supra note 3.

[9] *See* supra note 3.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2016–017 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2016–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2016–017, and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22026 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78789; File No. SR–BatsEDGX–2016–52]**

## Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Fees for Use of Bats EDGX Exchange, Inc.

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to EDGX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule to remove fee code ZA from footnote 1.

Currently, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's fee code and tiered pricing structure. Retail orders which add liquidity yielding fee code ZA receive a rebate of $0.0034 in securities priced at or above $1.00, and a rebate of $0.00003 in securities priced below $1.00. The Exchange offers additional rebates depending on the volume tiers for which such Member qualifies. As is the case with any rebate on the Fee Schedule, to the extent that a Member qualifies for higher rebates than those provided under a volume tier, the higher rebate shall apply. Footnote 1 offers volume tiered rebates ranging from $0.0025 to $0.0033 per share to orders yielding fee codes B, V, Y, 3, 4 and ZA. In this case, the corresponding tiered volume rebates are lower than the standard rebate and therefore do not result in an additional benefit. As a point of clarification, the Exchange proposes to remove fee code ZA from Footnote 1.

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its rates will continue to represent an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities and the proposed change will not in any way modify such rates. Rather, as described above, the proposed change is simply designed to remove fee code ZA from footnote 1, which further increases the clarity of the fee schedule. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on competition as it is simply designed to clarify the fee schedule to reflect the higher rebate that qualifying orders are already receiving.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsEDGX–2016–52 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGX–2016–52. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGX–2016–52, and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22030 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 17f–1(g), SEC File No. 270–30, OMB Control No. 3235–0290.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17f–1(g) (17 CFR 240.17f–1(g)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Paragraph (g) of Rule 17f–1 requires that all reporting institutions (*i.e.,* every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank insured by the FDIC) maintain and preserve a number of documents related to their participation in the Lost and Stolen Securities Program (''Program'') under Rule 17f–1. The following documents must be kept in an easily accessible place for three years, according to paragraph (g): (1) Copies of all reports of theft or loss (Form X–17F–1A) filed with the Commission's designee: (2) all agreements between reporting institutions regarding registration in the Program or other aspects of Rule 17f–1; and (3) all confirmations or other information received from the Commission or its designee as a result of inquiry.

Reporting institutions utilize these records and reports (a) to report missing, lost, stolen or counterfeit securities to the database, (b) to confirm inquiry of the database, and (c) to demonstrate compliance with Rule 17f–1. The Commission and the reporting institutions' examining authorities utilize these records to monitor the incidence of thefts and losses incurred by reporting institutions and to determine compliance with Rule 17f–1. If such records were not retained by reporting institutions, compliance with Rule 17f–1 could not be monitored effectively.

The Commission estimates that there are approximately 12,971 reporting institutions (respondents) and, on average, each respondent would need to retain 33 records annually, with each retention requiring approximately 1 minute (a total of 33 minutes or 0.55 hours per respondent per year). Thus, the total estimated annual time burden for all respondents is 7,134 hours (12,971 × 0.55 hours = 7,134). Assuming an average hourly cost for clerical work of $50.00, the average total yearly record retention cost of compliance for each respondent would be $27.50 ($50 × 0.55 hours). Based on these estimates, the total annual compliance cost for the estimated 12,971 reporting institutions would be approximately $356,702 (12,971 × $27.50).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: September 8, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22037 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

## Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension:
Rule 15c3–5, SEC File No. 270–601, OMB Control No. 3235–0673.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c3–5 (17 CFR 240.15c3–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) ("Exchange Act"). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 15c3–5 under the Exchange Act requires brokers or dealers with access to trading directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity.

The rule requires brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. Each such broker or dealer is required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. Such regular review is required to be conducted in accordance with written procedures and is required to be documented. The broker or dealer is required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) is required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the rule, and that the broker-dealer conducted such review. Such certifications are required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. Compliance with Rule 15c3–5 is mandatory.

Respondents consist of broker-dealers with access to trading directly on an exchange or ATS. The Commission estimates that there are currently 640 respondents. To comply with Rule 15c3–5, these respondents will spend a total of approximately 102,400 hours per year (160 hours per broker-dealer × 640 broker-dealers = 102,400 hours). At an average internal cost per burden hour of approximately $339.09, the resultant total related internal cost of compliance for these respondents is $34,722,560 per year (102,400 burden hours multiplied by approximately $339.09/hour). In addition, for hardware and software expenses, the Commission estimates that the average annual external cost would be approximately $20,500 per broker-dealer, or $13,120,000 in the aggregate ($20,500 per broker-dealer × 640 brokers and dealers = $13,120,000).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: September 8, 2016.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22038 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78793; File No. 10–227]**

## MIAX PEARL, LLC; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

September 8, 2016.

On August 12, 2016, MIAX PEARL, LLC ("PEARL" or "Applicant") submitted to the Securities and Exchange Commission ("Commission") a Form 1 application under the Securities Exchange Act of 1934 ("Exchange Act"), seeking registration as a national securities exchange under Section 6 of the Exchange Act.

The Commission is publishing this notice to solicit comments on PEARL's Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant PEARL's application to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to PEARL are satisfied.[1]

The Applicant's Form 1 application provides detailed information on how PEARL proposes to satisfy the requirements of the Exchange Act. The Form 1 application provides that PEARL would operate a fully automated electronic trading platform for the trading of listed options and would not maintain a physical trading floor. It also provides that liquidity would be derived from orders to buy and orders to sell submitted to PEARL electronically by its registered broker-dealer members, as well as from quotes submitted electronically by member market makers. Further, PEARL is wholly-owned by its parent company, Miami International Holdings, Inc. ("Miami Holdings"), which is also the parent company of an existing national securities exchange, Miami International Securities Exchange, LLC.

A more detailed description of the manner of operation of PEARL's proposed system can be found in Exhibit E to PEARL's Form 1 application. The proposed rulebook for the proposed exchange can be found in Exhibit B to PEARL's Form 1 application, and the governing documents for both PEARL and Miami Holdings can be found in Exhibit A and Exhibit C to PEARL's Form 1 application, respectively. A listing of the officers and directors of PEARL can be found in Exhibit J to PEARL's Form 1 application.

PEARL's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as in the Commission's Public Reference Room. Interested persons are invited to submit written data, views, and arguments concerning PEARL's Form 1, including whether the application is consistent with the Exchange Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

- Send an email to *rule-comments@sec.gov*. Please include File Number 10–227 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 10–227. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to PEARL's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number 10–227 and should be submitted on or before October 31, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[2]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22034 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 32254; 812–13889]**

## Advisors Series Trust and Orinda Asset Management, LLC; Notice of Intention To Rescind an Order

September 8, 2016.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of the Commission's intention to rescind an order pursuant to section 38(a) of the Investment Company Act of 1940 ("Act").

**SUMMARY:** At the request of Advisors Series Trust ("AST") and Orinda Asset Management, LLC ("Orinda," and together, the "Applicants"), the Commission intends to rescind an order previously issued to Applicants under section 6(c) of the Act that granted an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.[1]

*Hearing or Notification of Hearing:* An order rescinding the Prior Order will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 3, 2016 and should be accompanied by proof of service on the Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, Advisors Series Trust, 615 East Michigan Street, Milwaukee, WI

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[1] 15 U.S.C. 78s(a).

[2] 17 CFR 200.30–3(a)(71)(i).

[1] Advisors Series Trust and Orinda Asset Management, LLC, Investment Company Act Release Nos. 30043 (April 23, 2012) (notice) and 30065 (May 21, 2012) (order) ("Prior Order").

53202 and Orinda Asset Management, LLC, 4 Orinda Way, Suite 100B, Orinda, CA 94563.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6814 (Division of Investment Management, Chief Counsel's Office).

## Background

1. The Prior Order granted the Applicants relief from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements, to permit certain series of AST to enter into and materially amend subadvisory agreements without shareholder approval. Applicants have requested that the Prior Order be rescinded because they are not presently relying on the Prior Order and will not do so in the future.

2. Section 38(a) of the Act states, in relevant part, that the Commission shall have authority to rescind an order as is necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in the Act. The Commission intends to rescind the Prior Order pursuant to section 38(a) of the Act.

By the Commission.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22009 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78792; File No. SR–BatsBZX–2016–56]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of Bats BZX Exchange, Inc.

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend to amend its fees and rebates applicable to Members[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its fee schedule to: (i) Adopt a new tier called the Take Volume Tier under footnote 3; and (ii) add definitions of Options Customer Remove TCV and Step-Up Remove TCV, as described below, to the Definitions section of its fee schedule.

Currently, with respect to the Exchange's equities trading platform ("BZX Equities") the Exchange determines rebates and fees that it will apply to Members using the Exchange's tiered pricing structure. Under the Exchange's pricing structure, a Member will receive a standard rebate of either $0.0020 (for Tapes A and C) or $0.0025 (for Tape B) on orders that add liquidity and will be assessed a standard fee of $0.0030 per share executed on orders that remove liquidity. Reduced fees and increased rebates are available depending on the volume tier for which such Member qualifies. Included amongst the volume tiers offered by the Exchange are various tiers for purposes of BZX Equities pricing, which require participation on the Exchange's options platform ("BZX Options") and are generally referred to as "Cross-Asset Tiers". For instance, pursuant to footnote 3 of the BZX Equities Fee Schedule, the Exchange offers three Cross-Asset Step-Up Tiers, which provide enhanced rebates ranging from of $0.0027 to $0.0029 per share on displayed orders that add liquidity in Tape A, B and C securities submitted by Members with qualifying Step-Up Add TCV[6] on BZX Options.

In connection with the proposed tier described below, the Exchange proposes to adopt definitions for Options Customer Remove TCV and Step-Up Remove TCV. The proposed definition for Options Customer Remove TCV is based on and similar to the definition of Options Customer Add TCV set forth on the Exchange's Fee Schedule. As proposed, "Options Customer Remove TCV" for purposes of equities pricing would mean ADV[7] resulting from Customer[8] orders that remove liquidity as a percentage of TCV,[9] using the definitions of ADV, Customer and TCV as provided under the Exchange's fee schedule for BZX Options. The proposed definition for Step-Up Remove TCV is based on and similar to the definition of Step-Up Add TCV set forth on the Exchange's Fee Schedule. As proposed, "Step-Up Remove TCV" for purposes of equities pricing would mean ADV resulting from orders that remove liquidity as a percentage of TCV in the relevant baseline month subtracted from current ADV resulting from orders that remove liquidity as a percentage of TCV.

The Exchange proposes to adopt a new tier entitled "Take Volume Tier" under footnote 3, applicable to orders yielding fee codes BB, N and W. Under the Take Volume Tier, the Exchange is proposing to provide a reduced fee of $0.00295 per share to Members with: (1) Options Customer Remove TCV equal to or greater than 0.30%; and (2) Step-Up Remove TCV from July 2016 equal to or greater than 0.05%. As is the case with any other fee on the Fee Schedule, to the extent that a Member qualifies for a lower fee than those provided under the proposed Take Volume Tier, the lower fee shall apply.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] As defined in the Exchange's Fee Schedule.

[7] *Id.*

[8] *Id.*

[9] *Id.*

Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

Volume-based rebates and fees such as the proposed Take Volume Tier have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that the proposal to add a Take Volume Tier is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because it will provide Members with an additional incentive to reach certain thresholds on both BZX Equities and BZX Options. The increased liquidity from this proposal also benefits all investors by deepening the BZX Equities and BZX Options liquidity pools, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern on the Exchange and such increased volume increases potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange. To the extent a Member participates on the Exchange but not on BZX Options, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Options. As noted above, such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Options or not. The proposed pricing program is also fair and equitable in that membership in BZX Options is available to all market participants which would provide them with access to the benefits on BZX Options provided by the proposed changes, as described above, even where a member of BZX Options is not necessarily eligible for the proposed increased rebates on the Exchange. Further, the proposed changes will result in Members receiving either the same or a lower fee than they would currently receive.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to offer an incentive resulting in reduced fees for removing liquidity on the Exchange, which is intended to draw additional participants to the Exchange. The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all Members uniformly.

The Exchange does not believe that the proposed new Take Volume Tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBZX–2016–56 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–56 and should be submitted on or before October 5, 2016.

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22033 Filed 9–13–16; 8:45 am]

BILLING CODE 8011–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78787; File No. SR–BatsBZX–2016–57]**

## Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of Bats BZX Exchange, Inc.

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-Members of the Exchange pursuant to BZX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

### *(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to modify its fee schedule applicable to the Exchange's options platform ("BZX Options") to: (i) Adopt a new Quoting Incentive Program Tier under footnote 5; and (ii) adopt a new NBBO Setter Tier under footnote 4.

#### Quoting Incentive Program ("QIP") Tier 4

The Exchange currently offers three QIP tiers under footnote 5, which provide an additional rebate per contract for orders that add liquidity to the BZX Options Book[6] in options classes in which a Member is a Market Maker[7] registered on BZX Options pursuant to Rule 22.2. The Market Maker must be registered with BZX Options in an average of 20% or more of the associated options series in a class in order to qualify for QIP rebates for that class. The QIP tiers provide an enhanced rebate ranging from $0.02 to $0.05 per contract to qualifying Market Maker orders that yield fee code PM or NM. The Exchange now proposes to add QIP Tier 4 under which a Market Maker may receive an additional rebate of $0.03 per contract, where the Member has an ADAV[8] in Market Maker orders equal to or greater than 0.40% of average TCV.[9]

#### NBBO Setter Tier

The Exchange currently offers four NBBO Setter tiers under footnote 4, which provide an additional rebate per contract for non-Customer orders that add liquidity and establish a new National Best Bid or Offer ("NBBO"). The NBBO Setter tiers provide an enhanced rebate ranging from $0.02 to $0.05 per contract to qualifying non-Customer orders that yield fee code PA, PF, PM, PN, NA, NF, NM or NN. The Exchange now proposes to add a new NBBO Setter Tier 4 under which a non-Customer order may receive an additional rebate of $0.03 per contract where the Member has an ADAV in Market Maker orders equal to or greater than 0.40% of average TCV. As a result, the current NBBO Setter Tier 4 will be renamed to NBBO Setter Tier 5.

#### Implementation Date

The Exchange proposes to implement these amendments to its fee schedule as of September 1, 2016.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 16.1(a)(9).

[7] "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker as defined in Rule 16.1(a)(37).

[8] "ADAV" means average daily added volume calculated as the number of contracts added.

[9] "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

Volume-based rebates such as those currently maintained on the Exchange have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns, and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that its proposal to add a new QIP Tier 4 under footnote 5 is reasonable, fair and equitable and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally. In addition, the Exchange believes the amount of the proposed rebate offered under QIP Tier 4 is equitable and reasonable because it is generally in line with the rebates offered pursuant to QIP Tiers 1 to 3. The Exchange also notes that although registration as a Market Maker is required to qualify for QIP, such registration is available to all Members on an equal basis. The Exchange also believes that the proposed tier is reasonable, fair and equitable, and non-discriminatory because it, like the QIP generally, is aimed to incentivize active market making on the Exchange.

The Exchange believes that its proposal to add a new NBBO Setter Tier 4 under footnote 4 is reasonable, fair and equitable and non-discriminatory, for the reasons set forth above with respect to volume-based pricing generally. Similar to the pricing tiers discussed above, this incentive is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, including liquidity provision and the introduction of higher volumes of orders into the price and volume discovery processes. In particular, the enhanced rebate will encourage Market Maker orders at the NBBO, and is therefore directly focused on encouraging aggressively priced liquidity provision on BZX Options. The proposed differentiation between Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. Market Makers, unlike other market participants, have obligations to the market and regulatory requirements,[12] which normally do not apply to other market participants. A Market Maker has the obligation to make continuous markets, engage in course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with such course of dealings. On the other hand, other market participants do not have such obligations on the Exchange. For the same reasons, the Exchange believes it is reasonable to provide an additional incentive in the form of the proposed new NBBO Setter Tier 4 to Members submitting Market Maker orders.

### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes the proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange has designed the proposed amendments to its fee schedule in order to enhance its ability to compete with other exchanges. Also, the Exchange believes that the expansion of criteria required to qualify for volume-tiered rebates by the Exchange contributes to rather than burdens competition, as such changes are intended to incentivize participants to increase their participation on the Exchange. Similarly, the introduction of a new QIP and NBBO Setter tier are intended to provide incentives to Market Makers to encourage them to enter orders to the Exchange, and thus is again intended to enhance competition.

Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes to the Exchange's tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange. Also, the Exchange believes that the price changes contribute to, rather than burden competition, as such changes are broadly intended to incentivize participants to increase their participation on the Exchange, which will increase the liquidity and market quality on the Exchange, which will then further enhance the Exchange's ability to compete with other exchanges.

### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] *See* Exchange Rule 22.5, Obligations of Market Makers.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BatsBZX–2016–57 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsBZX–2016–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBZX–2016–57 and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22028 Filed 9–13–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78601; File No. SR–NYSEArca–2016–113]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period for the Exchange's Retail Liquidity Program

August 17, 2016.

*Correction*

In notice document 2016–20062, appearing on pages 57632–57634 in the Issue of Tuesday, August 23, 2016, make the following correction:

On page 57634, in the third column, beginning on the fifteenth line, the entry "September 12, 2016" should read "September 13, 2016".

[FR Doc. C1–2016–20062 Filed 9–12–16; 11:15 am]

**BILLING CODE 1505–01–D**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78786; File No. SR–CBOE–2016–066]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

September 8, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule. Specifically, the Exchange proposes to (1) increase the payment to the Designated Primary Market-Maker(s) appointed in FTSE 100 Index ("UKXM") and the China 50 Index "(FXTM") and (2) eliminate the transaction fee for Professional Customers and Voluntary Professionals ("W" origin code) ("Professionals") for all manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A[3]), ETF and ETN options classes.

Currently, the Exchange offers a compensation plan to the DPM(s) appointed in FXTM or UKXM to offset the initial DPM costs. More specifically, Footnote 43 to the Fees Schedule provides that DPM(s) appointed for an entire month in either FXTM or UKXM will receive a payment of $5,000 per class per month through December 31, 2016. The Payment was adopted to offset the initial DPM costs. The Exchange notes that the startup and ongoing costs to support these products still exceeds the current DPM payment. As such, the Exchange proposes to increase the payment to $7,500 per class per month in order to help offset the ongoing costs.

Next, the Exchange proposes to reduce the transaction fee for Professionals for all manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN options classes to $0.00 per contract. Currently, Professionals are assessed $0.25 per contract for manual executions in those classes. The Exchange notes that the proposed change is consistent with the amount assessed to similar transactions for Professionals at another Exchange.[4]

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* CBOE Fees Schedule, Footnote 34.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes that it's reasonable to increase the FXTM and UKXM DPM payment because the initial setup and ongoing costs exceed the DPM payment. Additionally, the Exchange believes it is equitable and not unfairly discriminatory to compensate DPM(s) that are appointed for an entire month in either FXTM or UKXM because the DPM(s) incur costs when receiving and maintaining an appointment, and in the case of FXTM and UKXM, the Exchange believes it is appropriate to continue to provide and increase compensation to the DPM(s) to offset those costs.

The Exchange believes it's reasonable to reduce the transaction fee for Professionals for all manual transactions in all penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN options classes to $0.00 per contract because Professionals would not incur a fee for those transactions. The Exchange notes that Customers are also not charged transaction fees for these transactions. The Exchange believes it's equitable and not unfairly discriminatory to propose to reduce the transaction fee for Professionals only because it is designed to attract a greater number of Professional orders in these classes. This increased volume creates greater trading opportunities that benefit all market participants. Specifically, while only Customer and Professional orders are not charged a transaction fee for manual executions, an increase in Customer and Professional order flow will bring greater volume and liquidity, which benefit all market participants by providing more trading opportunities and tighter spreads. In addition, another Exchange also does not charge Professionals a transaction fee for manual executions for similar transactions.[8] The Exchange lastly notes that assessing a different fee amount for manual executions than for electronic executions is equitable and not unfairly discriminatory because the Exchange has expended considerable resources to develop its electronic trading platforms and seeks to recoup the costs of such expenditures.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because, while only the DPM(s) appointed in UKXM and FXTM receive the increased DPM Payment, the DPM(s) have costs and obligations that other market participants do not. Additionally, while reducing the transaction rate to $0.00 for manual executions in penny and non-penny equity, index (excluding Underlying Symbol List A), ETF and ETN option classes only applies to Professionals, the proposed change is designed to encourage increased Professional options volume, which provides greater trading opportunities for all market participants. The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes only affect trading on CBOE. To the extent that the proposed changes make CBOE a more attractive marketplace for market participants at other exchanges, such market participants are welcome to become CBOE market participants.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–066 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–066. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–066 and should be submitted on or before October 5, 2016.

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[4] *See* NYSE Arca Options Fees and Charges, Trade-Related Charges for Standard Options.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] *See* supra note 4.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22027 Filed 9–13–16; 8:45 am]

BILLING CODE 8011–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78790; File No. SR–ISEGemini–2016–08]**

## Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 100(a)(37C) (Definitions) To Add Specificity to the Definition of a Professional

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2016, ISE Gemini, LLC ("ISE Gemini" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 100(a)(37C) (Definitions) to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the definition of "Professional" in Rule 100(a)(37C) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional Order.

Background

Exchange Rule 100(a)(37C) currently states, that the term Professional Order means an order that is for the account of a person or entity that is not a Priority Customer. A Priority Customer means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).[3] In order to properly represent orders entered on the Exchange, members are required to indicate whether orders are "Professional Orders." To comply with this requirement, members are required to review their Priority Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer Orders or Professional Orders.[4]

The Exchange accepts orders routed from other markets that are marked Professional Orders. The designation of Professional Order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional Orders, are treated equally for purposes of Exchange away market protection rules.[5] The Exchange continues to believe that identifying Professional Orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

Proposal

The Exchange proposes to count each Professional Order, regardless of the options exchange to which the order was routed in determining Professional Orders.[6]

Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. With respect to "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the Best Bid and Offer ("BBO") or National Best Bid and Offer ("NBBO"), these orders shall be counted as new orders.[7] The Exchange believes that because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders, that this type of activity is akin to market making in a Priority Customer account and should be counted, as a new order.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 100(a)(37A).

[4] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Orders for the next calendar quarter. Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five days.

[5] *See* International Securities Exchange, LLC Rules at 1901, 1902 and 1903, which are referenced in the Exchange's rules.

[6] All order types count toward the 390 orders on average per day.

[7] Cancel messages do not count as an order.

Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away.[8] An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Professional Orders, the manner in which the Priority Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Priority Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity qualified as a Professional Order; also the member did not intervene in that circumstance.
- The Exchange proposes to count orders, which result in multiple orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Priority Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange previously issued a notice which described the manner in which it believed thresholds should be computed for determining if an order qualifies as a Professional Order.[9] This rule supersedes the Exchange's notice.

The Exchange believes that there has been industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional Orders by filing a rule change similar to other options exchanges.[10]

Below are some examples of the calculation of Professional Orders.

Example #1:

A Priority Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to Exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the "same series" this would only count as one (1) order for purposes of Professional designation calculation.

Example #2:

A Priority Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 × 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

| | Singular | Multiple |
|---|---|---|
| **Single Strike Activity** | | |
| Priority Customer Order posted to 1 SRO order Book | x | |
| Priority Customer Order posted to Multiple SRO order Books simultaneously | x | |
| Cancel/Replace Activity | x | |
| Cancel/Replace Activity tracking BBO or NBBO | | x |

Singular—counts as a single order towards the 390 count.
Multiple—each order applies towards the 390 count.

The Exchange proposes to implement this rule on October 3, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue a Market Information Circular in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional Order designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

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[8] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include volatility orders, for example.

[9] *See* International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[10] NASDAQ BX, Inc, and NASDAQ Options Market LLC have similar rules in place for computing Professional orders. *See* BX Rules at Chapter I, Section 1(49). See NOM Rules at Chapter I, Section 1(48).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional Order has been met.

Cancel and Replace

With respect to determining the Professional Order designation, a cancel and replace order which replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced. The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

The Exchange believes that counting cancel and replace orders with "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the BBO or NBBO, as new orders is consistent with the Act because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. Tracking the BBO or NBBO[13] is akin to market making on the Exchange in a Priority Customer account and should be counted as new orders. The Exchange believes that the Priority Customers order designation should be reserved for a Priority Customer.

Parent/Child Orders

The Exchange's adoption of the Professional Order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Priority Customer Orders for purposes of priority within the order book and pricing.[14] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional Order designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation. The same side of market distinction protects Priority Customers. This practice is typically the type of transaction Priority Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation. The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional Orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Priority Customer Orders. The Professional Order designation focuses specifically on the number of orders generated.

Priority is one of the marketplace advantages provided to Priority Customer orders on the Exchange. Priority Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Priority Customer Orders on the Exchange is that members are generally not assessed transaction fees for the execution of Priority Customer Orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals.[15] The Exchange believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional Order designation which was to continue to provide Priority Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[16]

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

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[13] Tracking the BBO or NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[14] *See* Exchange Rule 713 and the Exchange's Fee Schedule.

[15] Market Professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

[16] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will uniformly apply the rules to calculate volume on all members in determining Professional Orders. The designation of Professional Orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional Orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the order Book.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have adopted similar guidance.[17] The Exchange believes that disparate rules regarding Professional Order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional Order. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional Order designations.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISEGemini–2016–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISEGemini–2016–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISEGemini–2016–08, and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22031 Filed 9–13–16; 8:45 am]

BILLING CODE 8011–01–P

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[17] NASDAQ BX, Inc, and NASDAQ Options Market LLC have similar rules in place for computing Professional orders. *See* BX Rules at Chapter I, Section 1(49). See NOM Rules at Chapter I, Section 1(48).

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78791; File No. SR–ISEMercury–2016–14]**

## Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Specificity to the Definition of a Professional in the Exchange's Rules

September 8, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2016, ISE Mercury, LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 100(a)(37C) (Definitions) to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to amend the definition of "Professional" in Rule 100(a)(37C) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional Order.

#### Background

Exchange Rule 100(a)(37C) currently states, that the term Professional Order means an order that is for the account of a person or entity that is not a Priority Customer. A Priority Customer means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).[3] In order to properly represent orders entered on the Exchange, members are required to indicate whether orders are "Professional Orders." To comply with this requirement, members are required to review their Priority Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer Orders or Professional Orders.[4]

The Exchange accepts orders routed from other markets that are marked Professional Orders. The designation of Professional Order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional Orders, are treated equally for purposes of Exchange away market protection rules.[5] The Exchange continues to believe that identifying Professional Orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

#### Proposal

The Exchange proposes to count each Professional Order, regardless of the options exchange to which the order was routed in determining Professional Orders.[6]

#### Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. With respect to "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the Best Bid and Offer ("BBO") or National Best Bid and Offer ("NBBO"), these orders shall be counted as new orders.[7] The Exchange believes that because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders, that this type of activity is akin to market making in a Priority Customer account and should be counted, as a new order.

#### Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away.[8] An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Professional Orders, the manner in which the Priority Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Priority Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 100(a)(37A).

[4] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Orders for the next calendar quarter. Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five days.

[5] *See* International Securities Exchange, LLC Rules at 1901, 1902 and 1903, which are referenced in the Exchange's rules.

[6] All order types count toward the 390 orders on average per day.

[7] Cancel messages do not count as an order.

[8] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include volatility orders, for example.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity qualified as a Professional Order; also the member did not intervene in that circumstance.
- The Exchange proposes to count orders, which result in multiple orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Priority Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange previously issued a notice which described the manner in which it believed thresholds should be computed for determining if an order qualifies as a Professional Order.[9] This rule supersedes the Exchange's notice.

The Exchange believes that there has been industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional Orders by filing a rule change similar to other options exchanges.[10]

Below are some examples of the calculation of Professional Orders.

### Example #1

A Priority Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to Exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the "same series" this would only count as one (1) order for purposes of Professional designation calculation.

### Example #2

A Priority Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 × 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders.

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

| | Singular | Multiple |
|---|---|---|
| **Single Strike Activity** | | |
| Priority Customer Order posted to 1 SRO order Book | x | |
| Priority Customer Order posted to Multiple SRO order Books simultaneously | x | |
| Cancel/Replace Activity | x | |
| Cancel/Replace Activity tracking BBO or NBBO | | x |

Singular—counts as a single order towards the 390 count.
Multiple—each order applies towards the 390 count.

The Exchange proposes to implement this rule on October 3, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue a Market Information Circular in advance to inform market participants of such date.

### *2. Statutory Basis*

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional Order designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional Order has been met.

### Cancel and Replace

With respect to determining the Professional Order designation, a cancel and replace order which replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced. The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

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[9] *See* International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[10] NASDAQ BX, Inc, and NASDAQ Options Market LLC have similar rules in place for computing Professional orders. *See* BX Rules at chapter I, section 1(49). See NOM Rules at chapter I, section 1(48).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

The Exchange believes that counting cancel and replace orders with "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the BBO or NBBO, as new orders is consistent with the Act because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. Tracking the BBO or NBBO[13] is akin to market making on the Exchange in a Priority Customer account and should be counted as new orders. The Exchange believes that the Priority Customers order designation should be reserved for a Priority Customer.

Parent/Child Orders

The Exchange's adoption of the Professional Order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Priority Customer Orders for purposes of priority within the order book and pricing.[14] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional Order designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation. The same side of market distinction protects Priority Customers. This practice is typically the type of transaction Priority Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation. The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional Orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Priority Customer Orders. The Professional Order designation focuses specifically on the number of orders generated.

Priority is one of the marketplace advantages provided to Priority Customer orders on the Exchange. Priority Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Priority Customer Orders on the Exchange is that members are generally not assessed transaction fees for the execution of Priority Customer Orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals.[15] The Exchange believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional Order designation which was to continue to provide Priority Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[16]

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will uniformly apply the rules to calculate volume on all members in determining Professional Orders. The designation of Professional Orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional Orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the order Book.

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[13] Tracking the BBO or NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[14] *See* Exchange Rule 713 and the Exchange's Fee Schedule.

[15] Market Professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

[16] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have adopted similar guidance.[17] The Exchange believes that disparate rules regarding Professional Order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional Order. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional Order designations.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–ISEMercury–2016–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISEMercury–2016–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISEMercury–2016–14, and should be submitted on or before October 5, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22032 Filed 9–13–16; 8:45 am]

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[17] NASDAQ BX, Inc, and NASDAQ Options Market LLC have similar rules in place for computing Professional orders. *See* BX Rules at chapter I, section 1(49). *See* NOM Rules at chapter I, section 1(48).

[18] 15 U.S.C. 78s(b)(3)(a)(iii).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–78788; File No. SR–ISE–2016–19]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Specificity to the Definition of a Professional in the Exchange's Rules

September 8, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2016, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 100(a)(37C) (Definitions) to add specificity to the definition of a Professional with respect to the manner in which the volume threshold will be calculated by the Exchange.

The text of the proposed rule change is available on the Exchange's Web site at *www.ise.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Purpose

The Exchange proposes to amend the definition of "Professional" in Rule 100(a)(37C) to specify the manner in which the Exchange calculates orders to determine if an order should be treated as Professional Order.

#### Background

Exchange Rule 100(a)(37C) currently states, that the term Professional Order means an order that is for the account of a person or entity that is not a Priority Customer. A Priority Customer means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).[3] In order to properly represent orders entered on the Exchange, members are required to indicate whether orders are "Professional Orders." To comply with this requirement, members are required to review their Priority Customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker-dealer should be represented as Priority Customer Orders or Professional Orders.[4]

The Exchange accepts orders routed from other markets that are marked Professional Orders. The designation of Professional Order does not result in any different treatment of such orders for purposes of Exchange rules concerning away market protection. That is, all non-broker or dealer orders, including those that meet the definition of Professional Orders, are treated equally for purposes of Exchange away market protection rules.[5] The Exchange continues to believe that identifying Professional Orders based upon the average number of orders entered in qualified accounts is an appropriately objective approach to reasonably distinguish such persons and entities from retail investors or market participants.

#### Proposal

The Exchange proposes to count each Professional Order, regardless of the options exchange to which the order was routed in determining Professional Orders.[6]

#### Cancel and Replace

A cancel and replace order is a type of order that replaces a prior order. The Exchange believes that the second order (the replacement order) should be counted as a new order. Complex Orders[7] consisting of eight legs or fewer will be counted as a single order, and with Complex Orders of nine options[8] legs or more, each leg will count as a separate order. With respect to "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the Best Bid and Offer ("BBO") or National Best Bid and Offer ("NBBO"), these orders shall be counted as new orders.[9] The Exchange believes that because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders, that this type of activity is akin to market making in a Priority Customer account and should be counted, as a new order.

#### Parent/Child Orders

An order that converts into multiple subordinate orders to achieve an execution strategy shall be counted as one order per side and series, even if the order is routed away.[10] An order that cancels and replaces a resulting subordinate order and results in multiple sides/series shall be counted as a new order on each side and series. For purposes of counting Professional Orders, the manner in which the Priority Customer submitted the order and whether the order was on the same side and series will determine if the order will count as one order. If one Priority Customer order on the same side and series is subsequently broken-up by a broker into multiple orders for purposes of execution or routed away, this order will count as one order. The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation.

In order to make clear when orders will count as new orders, the Exchange offers the following scenarios as examples.

- The Exchange proposes to count multiple orders that were submitted by the member as separate orders as multiple orders.
- The Exchange proposes to count a single order submitted by a member, which was automatically executed in multiple parts by the trading system, as one order, because the member did not intervene to create multiple orders. Another example is where an order was entered in the trading system and only partially filled, the order would count as one order. The subsequent fills, which could be multiple executions, would not count as additional orders in determining the 390 limit. The manner in which the order is ultimately executed, as one order or multiple orders, should not itself determine whether the activity qualified as a Professional Order; also the member did not intervene in that circumstance.

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[3] Rule 100(a)(37A).

[4] Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Orders for the next calendar quarter. Members will be required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter. While Members only will be required to review their accounts on a quarterly basis, if during a quarter the Exchange identifies a customer for which orders are being represented as Priority Customer Orders but that has averaged more than 390 orders per day during a month, the Exchange will notify the Member and the Member will be required to change the manner in which it is representing the customer's orders within five days. *See* Securities Exchange Act Release No. 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (SR–ISE–2006–26).

[5] *See* Exchange Rules 1901, 1902 and 1903.

[6] All order types count toward the 390 orders on average per day.

[7] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. Rule 722(a)(1).

[8] Orders that have nine legs, where one leg is a stock, will be considered one order. Stock orders shall not count toward the number of legs.

[9] Cancel messages do not count as an order.

[10] An order which is placed for the beneficial account(s) of a person or entity that is not a broker or dealer in securities that is broken into multiple parts by a broker or dealer or by an algorithm housed at a broker or dealer or by an algorithm licensed from a broker or dealer. Strategies include Complex Orders and volatility orders, for example.

- The Exchange proposes to count orders, which result in multiple orders due to cancel and replacement orders, as new orders. This is because in this situation the member did intervene to create the subsequent orders.
- The Exchange proposes to count an order submitted by the Priority Customer as a single order, on the same side and series, as a single order despite the fact that a broker broke-up the order into multiple orders for purposes of execution.

The Exchange previously issued a notice which described the manner in which it believed thresholds should be computed for determining if an order qualifies as a Professional Order.[11] This rule supersedes the Exchange's notice.

The Exchange believes that there has been industry confusion as to which orders count toward the 390 contract threshold. The Exchange's proposal is intended to provide clarity and to continue to promote consistency in the treatment of orders as Professional Orders by filing a rule change similar to other options exchanges.[12]

Below are some examples of the calculation of Professional Orders.

Example #1

A Priority Customer has an order to buy 100 calls at a volatility level of 35. The order then generates a child order resulting in a 1.00 bid for 100 options which is sent to Exchange A. After the underlying stock price ticks up 2 cents the child order is then adjusted to reflect a 35 level volatility which in this case (50 delta) results in a 1.01 bid sent to Exchange A replacing the current 1.00 bid.

In determining the number of orders that attribute to the 390 order count, in this case, because the child order is being canceled and replaced in the "same series" this would only count as one (1) order for purposes of Professional designation calculation.

Example #2

A Priority Customer has an order to buy 20k Vega at a 35 volatility level in symbol XYZ. The order then generates 50 child orders across different strikes. Throughout the day those 50 orders are adjusted as the stock moves resulting in the replacement of child orders to the tune of 5 times per order (50 x 5 cancels) resulting in 250 total orders generated to Exchange A.

In determining the number of orders that attribute to the 390 order count, in this case, because the child orders generated are across multiple series it would be necessary to count all 250 orders

In addition to the above examples, the Exchange provides the below chart to demonstrate the manner in which it will count orders.

| | Single | Multiple |
|---|---|---|
| **Single Strike Activity** | | |
| Priority Customer Order posted to 1 SRO order Book | x | |
| Priority Customer Order posted to Multiple SRO order Books simultaneously | x | |
| Cancel/Replace Activity | x | |
| Cancel/Replace Activity tracking BBO or NBBO | | x |
| **Complex Order Activity (8 option strikes or fewer)** | | |
| Priority Customer Order posted to 1 SRO order book | x | |
| Priority Customer Order posted to Multiple SRO Complex Order books simultaneously | x | |
| Cancel/Replace Activity | x | |
| Cancel/Replace Activity tracking BBO or NBBO | x | |
| **Complex Order Activity (9 option strikes or greater)** | | |
| Priority Customer Order posted to 1 SRO order book | | x |
| Priority Customer Order posted to Multiple SRO Complex Order Books simultaneously | | x |
| Cancel/Replace Activity | | x |
| Cancel/Replace Activity tracking BBO or NBBO | | x |

Singular—counts as a single order towards the 390 count
Multiple—each order applies towards the 390 count

The Exchange proposes to implement this rule on October 3, 2016 to provide market participants with advance notice for their quarterly calculations. The Exchange will issue a Market Information Circular in advance to inform market participants of such date.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by promoting the consistent application of its rules by further defining the manner in which the Exchange will compute the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) for purposes of determining the Professional Order designation. Furthermore, the Exchange believes that specifying the manner in which the 390 threshold will be calculated within its Rules will provide members with certainty and provide them with insight as they conduct their own quarterly reviews for purposes of designating orders.

The Exchange believes that counting all orders toward the number of orders, regardless of the options exchange to which the order was routed, will promote the consistent application of its rules by making clear that all order types shall be counted as well as all orders for the purpose of determining whether the definition of Professional Order has been met. The Exchange previously noted in its filing which created Professional Orders that,

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[11] *See* International Securities Exchange LLC's Regulatory Information Circular (2009–179) dated June 23, 2009.

[12] NASDAQ BX, Inc, and NASDAQ Options Market LLC have similar rules in place for computing Professional orders. *See* BX Rules at Chapter I, Section 1(49). See NOM Rules at Chapter I, Section 1(48).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

> The Exchange believes that identifying professional account holders based upon the average number of orders entered for a beneficial account is an appropriately objective approach that will reasonably distinguish such persons and entities from retail investors. The Exchange proposes the threshold of 390 orders per day on average over a calendar month because it believes it far exceeds the number of orders that are entered by retail investors in a single day, while being a sufficiently low number of orders to cover the professional account holders that are competing with broker-dealers in the ISE marketplace. In addition, basing the standard on the number of orders that are entered in listed options for a beneficial account(s) assures that professional account holders cannot inappropriately avoid the purpose of the rule by spreading their trading activity over multiple exchanges, and using an average number over a calendar month will prevent gaming of the 390 order threshold.[15]

### Cancel and Replace

With respect to determining the Professional Order designation, a cancel and replace order which replaces a prior order shall be counted as a second order. An order that is filled partially or in its entirety or is a replacement order that is automatically canceled or reduced by the number of contracts that were executed will not count as second order because it was not replaced. The Exchange believes that counting the replacement order as a second order is consistent with Exchange Rules because the replacement order is viewed as a new order with its own unique identifier.

The Exchange believes that counting cancel and replace orders with "single-strike algorithms," which are a series of cancel and replace orders in an individual strike which track the BBO or NBBO, as new orders is consistent with the Act because the Priority Customer is specifically instructing the executing broker in the "single-strike algorithm" scenario to cancel and replace these orders. Tracking the BBO or NBBO[16] is akin to market making on the Exchange in a Priority Customer account and should be counted as new orders. The Exchange believes that the Priority Customers order designation should be reserved for a Priority Customer.

Further, the Exchange's interpretation that Complex Orders consisting of eight legs or fewer will be counted as a single order, and respecting Complex Orders of nine options legs or more, each leg will count as a separate order is consistent with the Act, because the Exchange believes that nine or more options legs is sufficient quantity to justify counting these orders separately toward the volume count. The initial purpose of the rule change was to distinguish retail investors over market Professionals. The Exchange believes that typically Priority Customer Orders will not be as complex as to have nine legs and therefore using nine as the threshold reasonably differentiates Priority Customer Orders from Professional Orders. The Exchange believes that nine or more options legs evidences the distinction between the trading behavior of a retail investors as compared to a market Professional that would engaged in Complex Orders with nine or more options legs.

### Parent/Child Orders

The Exchange's adoption of the Professional Order was to treat orders in listed options per day on average during a calendar month in his or her own beneficial account differently from Priority Customer Orders for purposes of priority within the order book and pricing.[17] For this reason, the Exchange is adopting rules concerning the computation of orders which convert into multiple subordinate orders for the purpose of determining the Professional Order designation. The Exchange's proposal to count multiple subordinate orders that achieve an execution strategy as one order per side and series and count an order that cancels and replaces a resulting subordinate order and results in multiple sides/series as a new order is consistent with the Act, because the Exchange is distinguishing where the member is actively entering orders that result in multiple orders and canceling and replacing orders that result in multiple orders versus where the member had no control of the resulting executions. Allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation. The same side of market distinction protects Priority Customers. This practice is typically the type of transaction Priority Customers execute versus a Professional trader. Multiple related orders resulting from a large order filled in part, or an order which is cancelled and replaced several times are considered part of a related order. The Exchange does not desire to count large orders filled in part as multiple orders because the member did not intervene in the outcome of the execution. An order that results in several separate and unrelated orders would be counted as multiple orders because the member intervened in this circumstance.

The Exchange believes that the proposed amendment will provide more certainty to market participants in determining the computation of the number of orders in listed options per day on average during a calendar month for its own beneficial account(s) to determine the Professional Order designation. The Exchange believes that there is confusion as to which orders count toward the 390 contract threshold. The Exchange proposes to provide clarity to its Rules with specific guidance as to the computation of Professional Orders, which it believes will promote consistency in the treatment of orders as Professional orders. The Exchange believes that this proposed guidance will promote consistency and permit the proper calculation of options orders to prevent members with high volume from receiving benefits reserved for Priority Customer Orders. The Professional Order designation focuses specifically on the number of orders generated.

Priority is one of the marketplace advantages provided to Priority Customer orders on the Exchange. Priority Customer orders are given execution priority over non-Customer orders and quotations of market makers at the same price. Another marketplace advantage afforded to Priority Customer Orders on the Exchange is that members are generally not assessed transaction fees for the execution of Priority Customer Orders. The purpose of these marketplace advantages is to attract retail order flow to the Exchange by leveling the playing field for retail investors over market Professionals.[18] The Exchange believes that permitting certain types of orders to be counted as a single order and other types of orders to be counted as multiple orders is consistent with the original intent of the Professional Order designation which was to continue to provide Priority Customer accounts with marketplace advantages and distinguish those accounts non-Professional retail investors from the Professionals accounts some non-broker-dealer individuals and entities have access to information and technology that enables them to Professionally trade listed options in the same manner as a broker or dealer in securities.[19]

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[15] *See* Securities Exchange Act Release No. 57254 (February 1, 2008), 73 FR 7345 (February 7, 2008) (SR–ISE–2006–26).

[16] Tracking the BBO or NBBO shall mean any parent order that consumes any self-regulatory organization order book data feed, or the OPRA feed, to generate automated child orders, and move with, or follow the Bid or Offer of the series in question.

[17] *See* Exchange Rule 713 and the Exchange's Fee Schedule.

[18] Market Professionals have access to sophisticated trading systems that contain functionality not available to retail customers, including things such as continuously updated pricing models based upon real-time streaming data, access to multiple markets simultaneously and order and risk management tools.

Finally, the proposed guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the Exchange will uniformly apply the rules to calculate volume on all members in determining Professional Orders. The designation of Professional Orders would not result in any different treatment of such orders for purposes of the Exchange's Rules concerning order protection or routing to away exchanges. The guidance is being issued to stem confusion as to the manner in which options exchanges compute the Professional Order volume.

Counting All Orders

The Exchange believes that counting all orders entered by a Professional toward the number of orders, regardless of the options exchange to which the order was routed, does not create an undue burden on intra-market competition because this proposed rule change will be consistently applied to all members in determining Professional Orders.

Cancel and Replace

The Exchange believes that its application of cancel and replace orders does not create an undue burden on intra-market competition because this application is consistent with Exchange Rules, where the replacement order is viewed as a new order. This treatment is consistent with the manner in which this order type is applied today within the order Book.

The Exchange's interpretation that Complex Orders consisting of eight legs or fewer will be counted as a single order, and respecting Complex Orders of nine legs or more, each leg will count as a separate order does not create an undue burden on intra-market competition because the Exchange will apply this method of calculation uniformly among its member organizations.

Parent/Child Orders

The Exchange's treatment of subordinate orders does not create an undue burden on intra-market competition because allowing orders on the same side of the market to be counted as a single order is consistent with the original intent of the Professional Order designation which is to count distinct orders and focus on the number of orders generated.

The Exchange does not believe that the proposed rule change will impose an undue burden on inter-market competition because other exchanges have adopted similar guidance.[20] The Exchange believes that disparate rules regarding Professional Order designation, and a lack of uniform application of such rules, does not promote the best regulation and may, in fact, encourage regulatory arbitrage. The Exchange believes that it is therefore prudent and necessary to conform its rules to that of other options exchanges for purposes of calculating the threshold volume of orders to be designated as a Professional Order. This is particularly true where the Exchange's third-party routing broker-dealers are members of several exchanges that have rules requiring Professional Order designations.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–ISE–2016–19 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2016–19, and should be submitted on or before October 5, 2016.

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[19] For example, some broker-dealers provided their Professional customers with multi-screened trading stations equipped with trading technology that allows the trader to monitor and place orders on all six options exchanges simultaneously. These trading stations also provide compliance filters, order managements tools, the ability to place orders in the underlying securities, and market data feeds.

[20] NASDAQ PHLX LLC has a similar rule in place for computing Professional orders. *See* Rule 1000(b)(14).

[21] 15 U.S.C. 78s(b)(3)(a)(iii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2016–22029 Filed 9–13–16; 8:45 am]

BILLING CODE 8011–01–P

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## DEPARTMENT OF STATE

**[Public Notice: 9713]**

## Notice of 30 Day Public Comment Period Regarding the National Interest Determination for Otay Water District's Presidential Permit Application

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** On November 25, 2013, the Otay Water District applied for a Presidential Permit from the Department of State ("State Department") authorizing the construction, connection, operation, and maintenance of a cross-border liquid pipeline for the importation of desalinated seawater at the international boundary between the United States and Mexico in San Diego County, California. On September 2, 2016, after consulting with the public and interested agencies, the Office of Environmental Quality and Transboundary Issues (OES/EQT) at the State Department and the Otay Water District issued a final environmental impact report/environmental impact statement (EIR/EIS). Background information related to the application, including the application and the EIR/EIS, may be found at: *http://www.state.gov/p/wha/rt/permit/app/otaypermit/index.htm.*

The State Department's review of this application is based upon Executive Order 11423 of August 16, 1968, as amended. As provided in E.O. 11423, the Department is circulating this application to relevant federal agencies for review and comment. Under E.O. 11423, the Department has the responsibility to determine, taking into account views from these agencies and other stakeholders, whether issuing a Presidential Permit to Otay Water District authorizing the construction, connection, operation, and maintenance of a cross-border liquid pipeline for the importation of desalinated seawater would serve the national interest. That determination process involves consideration of many factors, including foreign policy; environmental, cultural, and economic impacts; compliance with applicable law and regulations; and other issues.

Interested members of the public are invited to submit written comments regarding this application. The public comment period will end 30 days from the publication of this notice. Comments are not private. They will be posted on the site *http://www.regulations.gov.* The comments will not be edited to remove identifying or contact information, and the State Department cautions against including any information that one does not want publicly disclosed. The State Department requests that any part soliciting or aggregating comments received from other persons for submission to the State Department inform those persons that the State Department will not edit their comments to remove identifying or contact information, and that they should not include any information in their comments that they do not want publicly disclosed.

**DATES:** Comments must be submitted no later than October 14, 2016 at 11:59 p.m.

**ADDRESSES:** For reasons of efficiency, the State Department encourages the electronic submission of comments through the federal government's eRulemaking Portal (*http://www.regulations.gov*), enter the Docket No. DOS–2016–0061, and follow the prompts to submit a comment. The State Department also will accept comments submitted in hard copy by mail and postmarked no later than October 14, 2016. Please note that standard mail delivery to the State Department can be delayed due to security screening. To submit comments by mail, use the following address: U.S.-Mexico Border Affairs Office, Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

**FOR FURTHER INFORMATION CONTACT:** Office of Mexican Affairs, Bureau of Western Hemisphere Affairs, via email at *WHA-BorderAffairs@state.gov*; by phone at 202–647–9894; or by mail at WHA/MEX—Room 3924, Department of State, 2201 C St. NW., Washington, DC 20520.

Dated: September 8, 2016.

**Colleen A. Hoey,**

*Director, Office of Mexican Affairs, Department of State.*

[FR Doc. 2016–22094 Filed 9–13–16; 8:45 am]

BILLING CODE 4710–29–P

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## DEPARTMENT OF STATE

**[Public Notice: 9714]**

## 60-Day Notice of Proposed Information Collection: PEPFAR Program Expenditures

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

**DATES:** The Department will accept comments from the public up to November 14, 2016.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering "Docket Number: DOS–2016–0048" in the Search field. Then click the "Comment Now" button and complete the comment form.
- *Email: ZaidiIF@state.gov.*
- *Regular Mail:* Send written comments to: Office of the US Global AIDS Coordinator and Health Diplomacy (S/GAC), U.S. Department of State, SA–22, 1800 G Street NW., Suite 10300, Washington, DC 20006.
- *Fax:* 202–663–2979.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Irum Zaidi, 1800 G St. NW., Suite 10300, SA–22, Washington DC 20006, who may be reached on 202–663–2440 or at *ZaidiIF@state.gov.*

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* PEPFAR Program Expenditures.

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[23] 17 CFR 200.30–3(a)(12).

- *OMB Control Number:* 1405–0208.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Office of the U.S. Global AIDS Coordinator and Health Diplomacy (S/GAC).
- *Form Number:* DS–4213.
- *Respondents:* Recipients of U.S. government funds appropriated to carry out the President's Emergency Plan for AIDS Relief (PEPFAR).
- *Estimated Number of Respondents:* 1627.
- *Estimated Number of Responses:* 1627.
- *Average Time Per Response:* 24 hours.
- *Total Estimated Burden Time:* 39,048 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

*Abstract of proposed collection:* The US President's Emergency Plan for AIDS Relief (PEPFAR) was established through enactment of the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Pub. L. 108–25), as amended by the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub L. 110–293) (HIV/AIDS Leadership Act) to support the global response to HIV/AIDS. Data are collected from implementing partners in countries with PEPFAR programs using a standard tool (DS–4213) via an electronic web-based interface into which users directly upload data. These data are analyzed to produce mean and range in expenditures by partner per result/achievement for all PEPFAR program areas. These analyses then feed into partner and program reviews at the country level for monitoring and evaluation on an ongoing basis. Summaries of these data provide key information about program costs under PEPFAR on a global level. Applying expenditure results will improve strategic budgeting, identification of efficient means of delivering services, accuracy in defining program targets, and will inform allocation of resources to ensure the program is accountable and using public funds for maximum impact.

*Methodology:* Data will be collected in a web-based interface available to all partners receiving funds under PEPFAR. After implementing EA over the last few years, we learned that implementing partners (IPs) prefer the Microsoft Excel template based data collection process. By being able to download a template, prime IPs responsible for completing the submission are more effectively able to collaborate quickly with other key personnel and coordinate with other partners to enter the data. This approach also proves helpful where internet connectivity is not strong. After completing the Excel template, IPs upload the data to an automated system that further checks the data entered for quality and completeness. Automated checks reduce the time needed by IPs to complete the data cleaning process.

Dated: September 9, 2016.

**Max L. Aguilar,**

*Deputy Coordinator for Management, Budget, and Operations, Office of the U.S. Global AIDS Coordinator, Department of State.*

[FR Doc. 2016–22092 Filed 9–13–16; 8:45 am]

**BILLING CODE 4710–10–P**

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## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36059]**

### Ozinga Bros., Inc.—Continuance in Control Exemption—Chicago Port Railroad Company

Ozinga Bros., Inc. (Ozinga Bros.), a noncarrier, has filed a verified notice of exemption for authority to continue in control of Chicago Port Railroad Company (CPRR), a Class III rail carrier. According to Ozinga Bros., in 2006, CPRR obtained authority to operate as a common carrier.[1] At the time, CPRR was, and now is, owned by Mokena Illinois Railroad (MIRR), a Class III rail carrier.[2] MIRR, in turn, was, and is, controlled by Ozinga Bros. Ozinga Bros.' ownership interest in MIRR, and its indirect ownership interest in CPRR, was not disclosed at the time of the CPRR transaction. Ozinga Bros. asserts that neither it nor MIRR sought Board authority for Ozinga Bros. to control CPRR when CPRR obtained its common carrier authority in 2006, because neither was aware that federal regulatory authority was required for Ozinga Bros. to control, directly or indirectly, multiple rail carriers. Ozinga Bros. states that the present notice of exemption serves to correct this inadvertent regulatory oversight so that it will possess the necessary regulatory authority to control the two railroads in its corporate family (CPRR and MIRR).

The effective date of the exemption is September 28, 2016 (30 days after the verified notice of exemption was filed).

As clarified in a letter filed on September 8, 2016, the applicant represents that: (1) The rail lines of CPRR and MIRR do not connect with each other or any railroads in their corporate family; (2) the continuance of control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroads in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the proposed transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligations to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than September 21, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36059, must be filed with the Surface Transportation Board, 395 E Street SW.,

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[1] *See Chicago Port R.R.—Operation Exemption—Ozinga Transp.*, FD 34808 (STB served Jan. 12, 2006).

[2] *See Mokena Ill. R.R.—Construction Exemption—Will Cty., Ill.*, FD 31680 (ICC served Oct. 4, 1990, and Dec. 3, 1990).

Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *WWW.STB.GOV.*

Decided: September 9, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Tia Delano,**

*Clearance Clerk.*

[FR Doc. 2016–22102 Filed 9–13–16; 8:45 am]

**BILLING CODE 4915–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0616]**

## Agency Information Collection Activity (Application for Residential Care Home Program Sponsor Application, VA Form 10–2407) Under OMB Review Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 14, 2016.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to "OMB Control No. 2900–0616" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–5870 or email *cynthia.harvey-pryor@va.gov.* Please refer to "OMB Control No. 2900–0616."

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

*Title:* Residential Care Home Program Sponsor Application—VA Form 10–2407.

*OMB Control Number:* 2900–0616.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 10–2407 is necessary for the residential care home to qualify to provide care to veteran patients. This information is collected under the authority of title 38, part II, sections 1720 and 1730. The form covers community providers. Community Nursing Homes (CNHs) already use the form, and the form will cover Home Health and Hospice Care agencies and community adult day health care centers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day period soliciting comments on this collection of information was published at 81 FR 14679 on June 22, 2016.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 42 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:* 500.

By direction of the Secretary.

**Cynthia Harvey-Pryor,**

*Program Specialist, Office of Privacy & Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–22073 Filed 9–13–16; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

## Genomic Medicine Program Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Genomic Medicine Program Advisory Committee will meet on October 27, 2016, at the Hilton Garden Inn, Washington, DC, U.S. Capitol, 1225 1st Street NE., Washington, DC 20002. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of VA on using genetic information to optimize medical care for Veterans and to enhance development of tests and treatments for diseases particularly relevant to Veterans.

The Committee will receive program updates and continue to provide insight into optimal ways for VA to incorporate genomic information into its health care program while applying appropriate ethical oversight and protecting the privacy of Veterans. The meeting focus will be on updates on the progress and planned characterization of the Million Veteran Program (MVP) samples, phenotyping activities and data access for the MVP. The Committee will also receive an update from the Clinical Genomics Service. Public comments will be received at 3:30 p.m. and are limited to 5 minutes each. Individuals who speak are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record to Dr. Sumitra Muralidhar, Designated Federal Officer, 810 Vermont Avenue NW., Washington, DC 20420, or by email at *sumitra.muralidhar@va.gov.* Any member of the public seeking additional information should contact Dr. Muralidhar at (202) 443–5679.

Dated: September 8, 2016.

**LaTonya L. Small,**

*Advisory Committee Management Officer.*

[FR Doc. 2016–22047 Filed 9–13–16; 8:45 am]

**BILLING CODE 8320–01–P**

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
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# FEDERAL REGISTER

Vol. 81 Wednesday,
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## Part II

## Department of Energy

41 CFR Chapter 109
Department of Energy Property Management Regulations; Interim Final Rule

## DEPARTMENT OF ENERGY

## 41 CFR Chapter 109

**RIN 1991–AB73**

## Department of Energy Property Management Regulations

**AGENCY:** Department of Energy.

**ACTION:** Interim final rule; notice of public meeting.

**SUMMARY:** The Department of Energy (DOE) publishes this interim final rule to amend the Department of Energy Property Management Regulations to conform to the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR), to remove out of date government property parameters, and update references. This rule does not alter substantive rights or obligations under current law.

**DATES:**

*Effective date:* This rulemaking is effective October 14, 2016.

*Comment date:* Written comments must be received by October 14, 2016. DOE will hold a public meeting to discuss this rule on September 22, 2016 from 9 a.m. to 11 a.m. in Warrenville, IL.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Fermi National Accelerator Laboratory, Outer Ring Rd, Warrenville, IL 60555.

You may submit comments, identified by "Property Management Regulations—RIN 1991–AB73," by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email to: DEARrulemaking@hq.doe.gov.* Include "Property Management Regulations—RIN 1991–AB73" in the subject line of the message.
- *Mail to:* U.S. Department of Energy, Office of Acquisition Management, MA–611, 1000 Independence Avenue SW., Washington, DC 20585. Comments by email are encouraged.

**FOR FURTHER INFORMATION CONTACT:** Mr. Scott Whiteford, Deputy Director, Office of Management, Department of Energy, at 202–287–1563.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Section by Section Analysis
III. Procedural Requirements
  A. Review Under Executive Order 12866
  B. Review Under the Regulatory Flexibility Act
  C. Review Under the Paperwork Reduction Act
  D. Review Under the National Environmental Policy Act
  E. Review Under Executive Order 13132
  F. Review Under Executive Order 12988
  G. Review Under the Unfunded Mandates Reform Act of 1995
  H. Review Under the Treasury and General Government Appropriations Act, 1999
  I. Review Under the Treasury and General Government Appropriations Act, 2001
  J. Review Under Executive Order 13211
  K. Review Under the Small Business Regulatory Enforcement Fairness Act
  L. The Administrative Procedure Act
  M. Approval of the Office of the Secretary of Energy

### I. Background

Management, use and disposal of government property is governed by 41 CFR Subtitle C, Federal Property Management Regulations System. Possession, use, and disposal of DOE owned property is governed by Chapter 109 of Subtitle C, Department of Energy Property Management Regulation (DOE–PMR) which is the DOE supplement to the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR). The DOE–PMR provides requirements for assets that are unique to DOE.

The DOE–PMR is currently out of date. It contains citations that are no longer accurate, references to regulations in the CFR that no longer exist. DOE has attempted to deal with these deficiencies using internal directives to address the deficiencies as they arose. At this time it is necessary to update the rule to correct the citations and references and to remove coverage of property that is no longer controlled by DOE.

This interim final rule updates the DOE–PMR. It removes expired and incorrect citations and inserts correct citations where appropriate. It clarifies content and realigns sections so that the DOE–PMR sections are numbered consistently with the corresponding sections in the FPMR/FMR. None of these changes add new requirements.

### II. Section by Section Analysis

DOE amends 41 CFR Ch. 109 as follows:

Section 109–1.100—50 Scope of subpart is amended to remove "Federal Property Management Regulation (FPMR)" and replaces it with "Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR)" throughout this chapter.

Section 109–1.100–51—Definitions and acronyms. The definitions and acronyms are amended to be consistent with current personal property requirements. In this chapter, the terms *personal property* and *property* are synonymous.

Section 109–1.110–50—Deviation procedures, is updated in paragraph (b)(1) by amending "Director, Office of Administrative Services" and adding "Office of Management."

Section 109–1.5100—Scope of subpart. This Section providing guidance on DOE standards and practices to be applied in the management of personal property is amended to delete outdated citations.

Section 109–1.5101—(b) is amended by removing "Director, Office of Administrative Services; heads of field organizations" and adding "Office of Management; Program Secretarial Officer (PSO)."

Section 109–1.5103—Loan of personal property, in paragraph (a) is amended by adding the term "domestic."

Section 109–1.5103—Loan of personal property, in paragraph (b) is amended by removing "Deputy Assistant Secretary for International Energy Policy, Trade and Investment" and adding "Office of International Affairs."

Section 109–1.5104—Borrowing of personal property is removed. This personal property practice is outdated.

Section 109–1.5105—Identification marking of personal property, is removed to eliminate outdated personal property practices.

Section 109–1.5108–2—Sensitive items is removed to eliminate outdated personal property citations].

Section 109–1.5109—Control of sensitive items is removed to eliminate outdated personal property citations.

Section 109–1.5110—Physical inventories of personal property. Paragraph (e) is amended to reflect current personal property practice. The DOE capitalization threshold for items acquired prior to October 1, 2011 is $50,000. For items acquired on or after October 1, 2011, the threshold is $500,000.

Section 109–1.5111—Retirement of property is amended to eliminate outdated personal property citations.

*Subpart 109–25.1*

Section 109–25.100—Use of Government personal property and nonpersonal services is removed toeliminate outdated personal property citations.

Section 109–25.103—Promotional materials, trading stamps, or bonus goods is removed to eliminate outdated personal property citations.

Section 109–25.103–1—General is removed to eliminate outdated personal property citations.

Section 109–25.104—Acquisition of office furniture and office machines is removed to eliminate outdated personal property citations.

Section 109–25.4—Replacement Standards is removed to eliminate outdated personal property citations.

Section 109–6.400–50—Is amended to add current personal property practices. Specifically, new paragraphs (l) and (m) are added as follows: (l) The prohibition against text messaging while operating a Government vehicle, or any vehicle while on Government business, as set forth under Executive Order 13513; and (m) See 31 U.S.C. 1344 and 41 CFR 301–10.201 for allowable use of Government vehicles while on temporary duty or official travel orders.

Section 109–6.402—Statutory provisions paragraph (c) is removed to eliminate outdated personal property citations.

Subpart 109–6.402—is amended by removing "Director, Office of Administrative Services; heads of field organizations" and adding in its place "Office of Management; Program Secretarial Officer (PSO)".

*Subpart 109–26–2*

Section 109–26.203—Activity address codes is amended by removing "Director, Office of Administrative Services" and adding in its place "Office of Management" to make it current with FPMR/FMR.

*Subpart 109–26.5*

Sections 109–26.501–1; 109–26.501–4; 109–26.501–50; 109–26.501–51; 109–26.501–52—are amended by removing "Director, Office of Administrative Services"; and adding in its place "Office of Management" to make it current with FPMR/FMR.

*Subpart 109–27.50*

Sections 109–27.5001; 109–27.5002; 109–27.5003; 109–27.5004; 109–27.5005; 109–27.5007; 109–27.5007–2; 109–27.5009; 109–27.5011; 109–27.5011–2; 109–27.5104–3—are removed to eliminate outdated personal property citations.

*Subpart 109–38.8*

Section 109–38.801—is amended by removing "Obtaining SF 149, U.S. Government National Credit Card" and adding in its place "Obtaining Fleet Credit Card".

Subpart 109–40.305–50—is removed to eliminate an outdated personal property citation.

*Subpart 109–43.3—Utilization of Excess*

§ 109–43.304–1.50—DOE reutilization screening is amended by removing (a) Prior to reporting excess personal property to GSA, reportable personal property shall be screened for reutilization within DOE through the Reportable Excess Automated Property System (REAPS) for a 30-day period. REAPS also provides for a 15-day expedited screening period for certain categories of personal property for economic development and to satisfy urgent conditions and replacing it with (a) Personal property must be processed through DOE electronic internal screening prior to reporting excess personal property to GSA. (D). National Utilization Officer (NUO).

Section 109–43.307–53—is amended by removing "Automatic data processing equipment (ADPE)" and adding in its place "Information Technology (IT)".

*Subpart 109–45.3*

Section 109–45.309–54—is amended by removing "Automatic data processing equipment (ADPE)" and adding in its place "Information Technology (IT)".

Subpart 109–45.6—Debarred, Suspended, and Ineligible Contractors, is removed to eliminate outdated citation.

Subpart 109–50.1—is amended by removing "Used Energy-Related Laboratory Equipment Grant Program (ERLE)" and adding in its place "Laboratory Equipment Donation Program Grant program (LEDP)".

All remaining sections of 41 CFR Chapter 109 will be amended to reflect current property management requirements consistent with the Federal Property Management Regulation/Federal Management Regulation (FPMR/FMR).

## III. Procedural Requirements

### *A. Review Under Executive Order 12866 and 13563.*

This regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. DOE believes that this interim final rule is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

### *B. Review Under Regulatory Flexibility Act of 1980*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461, August 16, 2002), DOE published procedures and policies to ensure that the potential impacts of its draft rules on small entities are properly considered during the rulemaking process (68 FR 7990, February 19, 2003), and has made them available on the Office of General Counsel's Web site: *http://www.energy.gov/gc/office-general-counsel.* DOE has reviewed this interim final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process.

### *C. Review Under the Paperwork Reduction Act of 1995*

This regulatory action will not impose any additional reporting or recordkeeping requirements subject to approval under the Paperwork Reduction Act. This interim final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number: 1845–0065.

### *D. Review Under the National Environmental Policy Act*

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)(NEPA). Specifically, DOE has determined that this interim final rule is covered under categorical exclusions found in DOE's NEPA regulations at paragraphs A5 and A6 of Appendix A to Subpart D, 10 CFR part 1021. Categorical exclusion A5 applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Categorical exclusion A6 applies to rulemakings that are strictly procedural. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

### *E. Review Under Executive Order 13132*

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

### *G. Review Under the Unfunded Mandates Act of 1995*

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

### *I. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516 note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

### *J. Review Under Executive Order 13211*

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

### *K. Review Under the Small Business Regulatory Enforcement Fairness Act*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

### *L. The Administrative Procedure Act*

In accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. This rulemaking, as a matter relating to public property, is exempt from the requirement to publish a notice of proposed rulemaking under 5 U.S.C. 553(a)(2). Specifically, this rule is a matter relating to public property. In addition, DOE is not obligated to provide an opportunity for comment on this rule pursuant to 5 U.S.C. 553(b)(B), which provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest." An opportunity for comment on this rule would be unnecessary because DOE is amending this rule only for consistency with the Federal property management regulations. DOE, however, is publishing this rule as an interim final rule and allowing for public comment until October 14, 2016.

### *M. Approval of the Office of the Secretary of Energy*

The Office of the Secretary has approved the issuance of this interim final rule.

### List of Subjects in 41 CFR Chapter 109

Government property management.

Issued in Washington, DC, on August 30, 2016.

**Carmelo Melendez,**

*Director, Office of Asset Management.*

**Barbara Stearrett,**

*Director, Acquisition Management, National Nuclear Security Administration.*

■ For the reasons stated in the preamble, DOE revises Chapter 109, title 41 of the Code of Federal Regulations, as set forth below:

# CHAPTER 109—DEPARTMENT OF ENERGY PROPERTY MANAGEMENT REGULATIONS

## PART 109–1—INTRODUCTION

## SUBCHAPTER A—GENERAL

### Subpart 109–1.1—Regulation System

Sec.

109–1.100–50 Scope of subpart.
109–1.100–51 Definitions and acronyms.
109–1.101 Federal Property Management Regulations/Federal Management Regulation System.
109–1.101–50 DOE–PMR System.
109–1.102 Federal Property Management Regulations/Federal Management Regulation.
109–1.101–50 DOE–PMR System.
109.1.102 Federal Property Management Regulations/Federal Management Regulation.
109–1.102–50 DOE–PMRs.
109–1.103 FPMR/FMR temporary regulations.
109–1.103–50 DOE–PMR temporary policies and bulletins.
109–1.104 Publication and distribution of FPMR/FMR.
109–1.104–50 Publication and distribution of DOE–PMR.
109–1.106 Applicability of FPMR/FMR.
109–1.106–50 Applicability of FPMR/FMR and DOE–PMR.
109–1.107 Agency consultation regarding FPMR/FMR.
109–1.107–50 Consultation regarding DOE–PMR.
109–1.108 Agency implementation and supplementation of FPMR/FMR.
109–1.110–50 Deviation procedures.

### Subpart 109–1.50—Personal Property Management Program

109–1.5000 Scope of subpart.
109–1.5001 Policy.
109–1.5002 Personal property management program objectives.

### Subpart 109–1.51—Personal Property Management Standards and Practices

109–1.5100 Scope of subpart.
109–1.5101 Official use of personal property.
109–1.5102 Maximum use of personal property.
109–1.5103 Loan of personal property.
109–1.5105 Identification marking of personal property.
109–1.5106 Segregation of personal property.
109–1.5107 Physical protection of personal property.
109–1.5108 Personal property records requirements.
109–1.5108–1 Equipment.
109–1.5108–3 Stores inventories.
109–1.5108–4 Precious metals.
109–1.5108–5 Administratively controlled items.
109–1.5110 Physical inventories of personal property.
109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.
109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.
109–1.5114 Use of non-Government-owned property.
109–1.5148 Personal property management reports.

### Subpart 109–1.52—Personal Property Management Program for Designated Contractors

109–1.5200 Scope of subpart.
109–1.5201 Policy.
109–1.5202 Establishment of a personal property holdings baseline.
109–1.5203 Management of subcontractor held personal property.
109–1.5204 Review and approval of a designated contractor's personal property management system.
109–1.5205 Personal property management system changes.

### Subpart 109–1.53—Management of High Risk Personal Property

109–1.5300 Scope of subpart.
109–1.5301 Applicability.
109–1.5302 Policies.
109–1.5303 Procedures.
109–1.5304 Deviations.

### Subpart 109–1.1—Regulation System

#### § 109–1.100–50 Scope of subpart.

This subpart sets forth the Department of Energy (DOE) Property Management Regulations (DOE–PMR) which establish uniform DOE property management policies, regulations, and procedures that implement and supplement the Federal Property Management Regulations/Federal Management Regulation. Property management statutory authorities that are unique to the Department (*e.g.,* section 161g of the Atomic Energy Act of 1954 (42 U.S.C. 2201(g)) and section 3155 of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 72741)) are not addressed in these regulations.

#### § 109–1.100–51 Definitions and acronyms.

(a) *Definitions.* As used in this chapter, the terms *personal property* and *property* are synonymous. In addition, the following definitions apply:

*Accountable Personal Property* includes nonexpendable personal property whose expected useful life is two years or longer and whose acquisition value, as determined by the agency, warrants tracking in the agency's property records, including capitalized and sensitive personal property. 41 CFR 102–35.20.

*Administratively controlled items* means personal property controlled at the discretion of individual DOE offices, but for which there is no DOE requirement to maintain formal records.

*Cannibalization* means to remove serviceable parts from one item of equipment in order to install them on another item of equipment (48 CFR Subpart 45.101).

*Capitalized Personal Property* includes property that is entered on the agency's general ledger records as a major investment or asset. An agency must determine its capitalization thresholds as discussed in Financial Accounting Standard Advisory Board (FASAB) Statement of Federal Financial Accounting Standards No. 6, 41 CFR 102–35.20; DOE Financial Management Handbook.

*Controlled Unclassified Information (CUI)* means the Unclassified information that is controlled within DOE because its release could cause damage. CUI within DOE encompasses Official Use Only (OUO) and Unclassified Nuclear Information (UCNI). OUO includes information such as Personally Identifiable Information, Export Controlled Information, proprietary information, and other information not covered by other DOE directives. CUI is governed by Executive Order 13556 and is a developing Government-wide policy, Controlled Unclassified Information, which will mandate uniform standards for the control of unclassified information within the Government.

*Designated contractors* means those on-site DOE contractors to which the DOE–PMR is made applicable when included as a contractual requirement. The contractors to which these regulations may be made applicable include management and operating (M&O) contractors, environmental management, and other major prime contractors located at DOE sites.

*Direct operations* means operations conducted by DOE personnel.

*Disposal* means the process of reutilizing, transferring, donating, selling, abandoning, destroying, or other disposition of Government-owned personal property.

*Dual-Use List* means nuclear-related material, equipment, and related technology as described in the Nuclear Suppliers Group Dual-Use List as published in International Atomic Energy Agency Information Circular (INFCIRC) 254 Part 2 and as implemented by the Department of Commerce in the U.S. Export Administration Regulations (15 CFR part 774).

*Equipment* means a tangible asset that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use (48 CFR Subpart 45.101).

*Especially designed or prepared property* means equipment and material designed or prepared especially for use in the nuclear fuel cycle and described in the Nuclear Suppliers Group Trigger List as published in International Atomic Energy Agency INFCIRC 254 Part 1 and as implemented by the Nuclear Regulatory Commission in 10 CFR part 110.

*Excess Property* means property that is no longer required to carry out the Department of Energy's needs, but for purposes of this regulation, such property has not been reported to the General Services Administration as excess property under 41 CFR 102–36.35.

*Export controlled information* means unclassified U.S. Government information under DOE cognizance that, if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, or a DOE authorization for export, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives.

*Export controlled property* means property the export of which is subject to licensing by the U.S. Department of Commerce, the U.S. Department of State, the U.S. Nuclear Regulatory Commission, or authorized by the U.S. Department of Energy.

*Hazardous personal property* means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601–2609). 41 CFR 102–36.40.

*High risk personal property* means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled, and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapon components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information.

*Information Technology.* (i) With respect to an executive agency means any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency, if the equipment is used by the executive agency directly or is used by a contractor under a contract with the executive agency that requires the use—

(A) Of that equipment; or

(B) Of that equipment to a significant extent in the performance of a service or the furnishing of a product;

(ii) Includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources; but

(iii) Does not include any equipment acquired by a federal contractor incidental to a federal contract. 40 U.S.C. 11101.

*Munitions List Items (MLIs)* are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State. 41 CFR 102–36.40.

*Nuclear weapon component or weapon-like component* means parts of whole war reserve nuclear weapon systems, joint test assemblies, trainers, or test devices, including associated testing, maintenance, and handling equipment; or items that simulate such parts.

*Organizational Property Management Officers* means establish and administer personal property management programs within their organizations consistent with applicable laws, regulations, practices, and standards.

*Personal property* means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories: Battleships, cruisers, aircraft carriers, destroyers, and submarines. 102–36.40.

*Program Secretarial Officer* (PSO) Assistant Secretaries/Program Element Heads.

*Proliferation-sensitive property* means nuclear-related or dual-use equipment, material, or technology as described in the Nuclear Suppliers Group Trigger List and Dual-Use List, or equipment, material or technology used in the research, design, development, testing, or production of nuclear or other weapons.

*Property Administrator* means an authorized representative of the contracting officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a contractor FAR 45–101.

*Property management* means the system of acquiring, maintaining, using and disposing of the personal property of an organization or entity. 102–35.20.

*Radioactive property* means any item or material that is contaminated with radioactivity and which emits ionizing radiation in excess of background radiation as measured by appropriate instrumentation.

*Sensitive Personal Property* includes all items, regardless of value, that require special control and accountability due to unusual rates of loss, theft or misuse, or due to national security or export control considerations. Such property includes weapons, ammunition, explosives, information technology equipment with memory capability, cameras, and communications equipment. These classifications do not preclude agencies from specifying additional personal property classifications to effectively manage their programs. 41 CFR 102–35.20.

*Spare equipment/property* means items held as replacement spares for equipment in current use in DOE program.

*Special nuclear material* means plutonium, uranium 233, uranium enriched in the isotope 233 or 235, any other materials which the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material.

*Trigger List* means nuclear material, equipment, and related technology as described in International Atomic Energy Agency in INFCIRC 254, Part 1 and as implemented by the Nuclear Regulatory Commission in 10 CFR part 110.

*Unclassified controlled nuclear information* means U.S. Government information pertaining to atomic energy defense activities as defined in section 148 of the Atomic Energy Act. Such information can relate to aspects of nuclear weapons design, development, testing, physical security, production, or utilization facilities. 10 CFR part 1017.

(b) *Acronyms.* As used in this chapter, the following acronyms apply:

CFR: Code of Federal Regulations
CSC: Customer Supply Center
CUI: Controlled Unclassified Information
DEAR: Department of Energy Acquisition Regulation
DOD: Department of Defense
DOE: Department of Energy
DOE–PMR: Department of Energy Property Management Regulations
DPMO: Departmental Property Management Officer
ECCN: Export Control Classification Number
ECI: Export Controlled Information
EHFFP: Equipment Held For Future Projects
EOQ: Economic Order Quantity
FAR: Federal Acquisition Regulation
FPMR/FMR: Federal Property Management Regulations/Federal Management Regulation
FSC: Federal Supply Classification
FSCG: Federal Supply Classification Group
GAO: General Accounting Office
GSA: General Services Administration
GVWR: Gross Vehicle Weight Rating
INFCIRC: International Atomic Energy Agency Information Circular
IFMS: Interagency Fleet Management System
IT: Information Technology
LEDP: Laboratory Equipment Donation Program
M&O: Management and Operating
MCTL: Military Critical Technologies List
OPMO: Organizational Property Management Officer
OPSEC: Operations Security
PA: Property Administrator
PSO: Program Secretarial Officer (PSO)
SNM: Special Nuclear Material
UCNI: Unclassified Controlled Nuclear Information
U.S.C.: United States Code

### § 109–1.101 Federal Property Management Regulations/Federal Management Regulation System.

### § 109–1.101–50 DOE–PMR System.

The DOE–PMR system described in this subpart is established to provide uniform personal property management policies, standards, and practices within the Department.

### § 109–1.102 Federal Property Management Regulations/Federal Management Regulation.

### § 109–1.102–50 DOE–PMRs.

The DOE–PMRs (41 CFR Ch. 109) implements and supplements the FPMR/FMR (41 CFR Ch. 101) issued by the General Services Administration (GSA), Public Laws, Executive Orders, Office of Management and Budget directives, and other agency issuances affecting the Department's personal property management program.

### § 109–1.103 FPMR/FMR temporary regulations.

### § 109–1.103–50 DOE–PMR temporary policies and bulletins.

(a) Subject to applicable procedural requirements in 41 U.S.C. 1707, 42 U.S.C 7191 and 5 U.S.C 553, Personal Property Letters are authorized for publication of temporary policies that should not be codified in the Code of Federal Regulations (CFR).

(b) DOE–PMR Bulletins are used to disseminate information concerning personal property management matters not affecting policy or to clarify instructions in actions required by the FPMR/FMR or DOE–PMR.

### § 109–1.104 Publication and distribution of FPMR/FMR.

### § 109–1.104–50 Publication and distribution of DOE–PMR.

The DOE–PMR will be published in the **Federal Register** and will appear in the CFR as Chapter 109 of Title 41, Public Contracts and Property Management. Written publications of the DOE–PMR will be distributed to DOE offices.

### § 109–1.106 Applicability of FPMR/FMR.

### § 109–1.106–50 Applicability of FPMR/FMR and DOE–PMR.

(a) The FPMR/FMR and DOE–PMR apply to all direct operations.

(b) The DOE–PMR does not apply to facilities and activities conducted under Executive Order 12344 (Naval Nuclear Propulsion Program) and Public Law 98–525.

(c) Unless otherwise provided in the appropriate part or subpart, the FPMR/FMR and DOE–PMR apply to designated contractors.

(d) The Procurement Executive or head of a contracting activity may designate contractors other than designated contractors to which the FPMR/FMR and DOE–PMR apply.

(e) Program Secretarial Officers and other DOE elements are responsible to identify the contracts that involve the life-cycle management of personal property assets. The respective program's Head of Contracting Activity is responsible to issue direction to Contracting Officers to incorporate any and all applicable requirements of the FPMR/FMR and DOE–PMR and any supplemental Program Office guidance into contracts identified with life-cycle management of personal property.

(f) Principal authority and responsibility for the administration of DOE personal property in the custody of its contractors rest with the responsible Contracting Officer.

(g) The FPMR/FMR and DOE–PMR shall be used by contracting officers in the administration of applicable contracts, and in the review, approval, or appraisal of such contractor operations.

(h) Regulations for the management of Government property in the possession of other DOE contractors are contained in the Federal Acquisition Regulation (FAR), 48 CFR part 45, and in the DOE Acquisition Regulation (DEAR), 48 CFR part 945.

(i) Regulations for the management of personal property held by financial assistance recipients are contained in the DOE Financial Assistance Rules (10 CFR part 600) 2 CFR parts 200 and 910 and DOE Order 534.1, Accounting.

### § 109–1.107–50 Consultation regarding DOE–PMR.

(a) The DOE–PMR shall be fully coordinated with all Departmental elements substantively concerned with the subject matter.

(b) The accountable Under Secretary is responsible for implementation of the DOE PMR through their respective DOE elements.

(c) Program Secretarial Officers and DOE elements with responsibility for personal property, as delegated by their cognizant Under Secretary, may develop program management plans and issue internal program office guidance that is aligned to the requirements in the DOE–PMR and as explicitly authorized by their Under Secretary.

(d) Heads of Contracting Activity designates Organizational Property Management Officers (OPMO) to establish and administer personal property management programs within their organizations.

(e) Contracting Officers designates Property Administrators (PA) as authorized representatives responsible performing delegated contract administration functions for contract and financial assistance requirements relating to Government personal property.

(f) The Office of Management is responsible for Agency-level management of the contract property program and provides policy and management assistance in support of the policy implementation effort. The Office of Management designates an Agency Property Executive to serve as National Utilization Officer responsible for promoting acquisition and utilization of excess personal property and for establishing policies, standards, and guidance in accordance with applicable laws, regulations and sound personal property management practices and standards.

### § 109–1.108 Agency implementation and supplementation of FPMR/FMR.

(a) The DOE–PMR includes basic and significant Departmental personal property management policies and standards which implement, supplement, or deviate from the FPMR/FMR. In the absence of any DOE–PMR issuance, the basic FPMR/FMR material shall govern.

(b) The DOE–PMR shall be consistent with the FPMR/FMR and shall not duplicate or paraphrase the FPMR/FMR material.

(c) Implementing procedures, instructions, and guides which are necessary to clarify or to implement the DOE–PMR may be issued by Headquarters or field organizations, provided that the implementing procedures, instructions and guides:

(1) Are consistent with the policies and procedures contained in this regulation;

(2) To the extent practicable, follow the format, arrangement, and numbering system of this regulation; and

(3) Contain no material which duplicates, paraphrases, or is inconsistent with the contents of this regulation.

### § 109–1.110–50 Deviation procedures.

(a) Each request for deviation shall contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the DOE–PMR;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contractor affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request;

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

(b)(1) Requests for deviations from applicable portions of the FPMR/FMR and DOE–PMR (except aviation related portions) shall be forwarded with supporting documentation by the Organizational Property Management Officer (OPMO) to the Office of Management.

(2) Requests for deviations from aviation related portions of the FPMR/FMR and DOE–PMR concerning aviation operations shall be forwarded by the OPMO or on-site DOE Aviation Management Officer with supporting documentation to the DOE Senior Aviation Management Official.

(c) The accountable Under Secretary is authorized to approve documented program-specific or location-specific exemptions, exclusions, and/or deviations from requirements of the DOE PMR based on mission needs, efficiency, and/or efficacy of execution without disregarding federal laws and regulations.

(d) Requests for deviations from the FPMR/FMR will be coordinated with GSA by the Office of Management.

## Subpart 109–1.50—Personal Property Management Program

### § 109–1.5000 Scope of subpart.

This subpart supplements the FPMR/FMR, states DOE personal property management policy and program objectives, and prescribes authorities and responsibilities for the conduct of an efficient personal property management program in DOE.

### § 109–1.5001 Policy.

It is DOE policy that a program for the management of personal property shall be established and maintained to meet program needs. Personal property shall be managed efficiently, in accordance with Federal statutes and regulations, and in alignment with mission needs. Personal property must be managed in a safe and secure manor and ensure personal property assets are available to support efficient mission execution. Commercial practices may be used (*i.e.,* industry leading practices, voluntary consensus standards) that are necessary, appropriate, and provide effective and efficient Government property management, except where those practices are inconsistent with law, regulation or otherwise impractical.

### § 109–1.5002 Personal property management program objectives.

The objectives of the DOE personal property management program are to provide:

(a) A system for efficiently managing personal property in the custody or possession of DOE organizations and designated contractors; and

(b) Uniform principles, policies, and standards for efficient management of personal property that are sufficiently broad in scope and flexible in nature to facilitate adaptation to local needs and various kinds of operations.

## Subpart 109–1.51—Personal Property Management Standards and Practices

### § 109–1.5100 Scope of subpart.

This subpart provides guidance on DOE standards and practices to be applied in the management of personal property.

### § 109–1.5101 Official use of personal property.

Personal property shall be used only in the performance of official work of the United States Government, except:

(a) In emergencies threatening loss of life or property as authorized by law;

(b) As otherwise authorized by law and approved by the Office of

Management; Program Secretarial Officer (PSO) for their respective organizations; or a contracting officer for contractor-held property.

### § 109–1.5102 Maximum use of personal property.

Personal property management practices shall assure the best possible use of personal property. Supplies and equipment shall be generally limited to those items essential for carrying out the programs of DOE efficiently.

### § 109–1.5103 Loan of personal property.

(a) Personal property which is not excess and would otherwise be out of service for temporary periods may be loaned to other DOE offices and contractors, other Federal agencies, and to others for official purposes. The loan request shall be in writing, stating the purpose of the loan and period of time required. The loan shall be executed on DOE Form 4420.2, Personal Property Loan Agreement when approved in writing by the OPMO or on-site DOE property administrator. When approved, a memorandum transmitting the loan agreement shall be prepared identifying the loan period, delivery time, method of payment and transportation, and point of delivery and return, to ensure proper control and protect DOE's interest. The domestic loan period shall not exceed one year, but may be renewed in one year increments. Second renewals of loan agreements shall be reviewed and justified at a level of management at least two levels above that of the individual making the determination to loan the property. Third renewals shall be approved by the head of the field organization or designee.

(b) Requests for loans to foreign Governments and other foreign organizations shall be submitted to the Office of International Affairs for approval, with a copy to the cognizant Headquarters program office.

### § 109–1.5105 Identification marking of personal property.

(a) Personal property shall be marked "U.S. Government property" or "U.S. DOE") subject to the criteria below. The markings shall be securely affixed to the property, legible, and conspicuous. Examples of appropriate marking media are bar code labels, decals, and stamping.

(b) Personal property which by its nature cannot be marked, such as stores items, metal stock, etc., is exempted from this requirement.

(c) To the extent practicable and economical, markings shall be removed prior to disposal outside of DOE. 41 CFR 102–35.30.

### § 109–1.5106 Segregation of personal property.

Generally, contractor-owned personal property shall be segregated from Government personal property. Commingling of Government and contractor-owned personal property may be allowed only when:

(a) The segregation of the property would materially hinder the progress of the work (*i.e.,* segregation is not feasible for reasons such as small quantities, lack of space, or increased costs); and

(b) Control procedures are adequate (*i.e.,* the Government property is specifically marked or otherwise identified as Government property).

### § 109–1.5107 Physical protection of personal property.

Controls such as property pass systems, memorandum records, regular or intermittent gate checks, and/or perimeter fencing shall be established as appropriate to prevent loss, theft, or unauthorized removal of property from the premises on which such personal property is located.

### § 109–1.5108 Personal property records requirements.

The contractor's property control records shall provide the following information for every accountable item of Government personal property in the contractor's possession and any other data elements required by specific contract provisions:

(a) Contract number or equivalent code designation.

(b) Asset type.

(c) Description of item (name, serial number, national stock number (if available)).

(d) Property control number (Government ownership identity).

(e) Unit acquisition cost (including delivery and installation cost, when appropriate, and unit of measure).

(f) Acquisition document reference and date.

(g) Manufacturer's name, model and serial number.

(h) Quantity received, fabricated, issued or on hand.

(i) Location (physical area)

(j) Custodian name and organization code.

(k) Use status (active, storage, excess, etc.)

(l) High risk designation.

(m) Disposition document reference and date.

### § 109–1.5108–1 Equipment.

An individual property record will be developed and maintained for each item of equipment.

### § 109–1.5108–3 Stores inventories.

Perpetual inventory records are to be maintained for stores inventory items.

### § 109–1.5108–4 Precious metals.

Perpetual inventory records are to be maintained for precious metals.

### § 109–1.5108–5 Administratively controlled items.

No formal property management records are required to be maintained for this category of personal property, which includes such items as those controlled for calibration or maintenance purposes, contaminated property, tool crib items, and equipment pool items. Various control records can be employed to help safeguard this property against waste and abuse, including purchase vs. use information, tool crib check-outs, loss and theft reports, calibration records, disposal records, and other similar records. Control techniques would include physical security, custodial responsibility, identification/marking, or other locally established control techniques.

### § 109–1.5110 Physical inventories of personal property.

(a) Physical inventories of those categories of personal property as specified in paragraph (g) of this section shall be conducted at all DOE and designated contractor locations.

(b) Physical inventories shall be performed by the use of personnel other than custodians of the property. Where staffing restraints or other considerations apply, the inventory may be performed by the custodian with verification by a second party.

(c) Detailed procedures for the taking of physical inventories shall be developed for each DOE office and designated contractor. The OPMO/PA shall review and approve the DOE office and contractor procedures.

(d) The conduct of a physical inventory will be observed, or follow-on audits made, by independent representatives, *e.g.,* finance, audit, or property personnel, to the extent deemed necessary to assure that approved procedures are being followed and results are accurate. These observations or audits shall be documented and the documentation retained in the inventory record file.

(e) The DOE capitalization threshold for items acquired prior to October 1, 2011 is $50,000. For items acquired on or after October 1, 2011, the threshold is $500,000.

(f) Procedures that are limited to a check-off of a listing of recorded property without actual verification of the location and existence of such property do not meet the requirements of a physical inventory.

(g) The frequency of physical inventories of personal property shall be as follows:

(1) Equipment—biennial 98%. Inventory accuracy.

(2) Sensitive items—annual 100%. Inventory accuracy.

(3) Stores inventories—annual.

(4) Precious metals—annual 100% Inventory accuracy.

(5) HRPP—annual 100% Inventory accuracy.

(6) All other accountable property every three years 98% Inventory accuracy.

(7) Administratively controlled items—There is no formal Department requirement for the performance of physical inventories of this property. However, OPMOs/PA's determines inventory requirements based on management needs.

(h) Physical inventories shall be performed at intervals more frequently than required when experience at any given location or with any given item or items indicates that this action is necessary for effective property accounting, utilization, or control as directed by OPMO/PA.

(i) Physical inventories of equipment may be conducted by the "inventory by exception" method. The system and procedures for taking physical inventories by this method must be fully documented and approved in writing by the OPMO/PA.

(j) The results of physical inventories shall be reconciled with the property records, and with applicable financial control accounts.

(k) The results of physical inventories shall be reported to the OPMO/PA.

(l) Physical inventories of equipment and stores inventories may be conducted using statistical sampling methods in lieu of the normal wall-to-wall method. The sampling methods employed must be statistically valid and approved in writing by the OPMO. If use of the statistical methods of physical inventory does not produce acceptable results, the wall-to-wall method shall be used to complete the inventories.

### § 109–1.5112 Loss, damage, or destruction of personal property in possession of DOE direct operations.

DOE offices shall establish procedures to provide for the reporting, documentation, and investigation of instances of loss, damage, or destruction of personal property including:

(a) Notification to appropriate DOE organizations and law enforcement offices;

(b) Determination of cause or origin;

(c) Liability and responsibility for repair or replacement; and

(d) Actions taken to prevent further loss, damage, or destruction, and to prevent repetition of similar incidents.

### § 109–1.5113 Loss, damage, or destruction of personal property in possession of designated contractors.

(a) Designated contractors shall report any loss, damage, or destruction of personal property in its possession or control, including property in the possession or control of subcontractors, to the property administrator as soon as it becomes known.

(b) When physical inventories, consumption analyses, or other actions disclose consumption of property considered unreasonable by the property administrator; or loss, damage, or destruction of personal property not previously reported by the contractor, the property administrator shall require the contractor to investigate the incidents and submit written reports.

(c) Reports of physical inventory results and identified discrepancies shall be submitted to the property administrator within 90 days of completion of physical inventories. An acceptable percentage of shrinkage for stores inventories shall be determined by the property administrator on a location-by-location basis, based on type and cost of materials, historical data, and other site-specific factors. This determination shall be in writing and be supported by appropriate documentation.

(d) The contractor's report referenced above shall contain factual data as to the circumstances surrounding the loss, damage, destruction or excessive consumption, including:

(1) The contractor's name and contract number;

(2) A description of the property;

(3) Cost of the property, and cost of repairs in instances of damage (in event actual cost is not known, use reasonable estimate);

(4) The date, time (if pertinent), and cause or origin; and

(5) Actions taken by the contractor to prevent further loss, damage, destruction, or unreasonable consumption, and to prevent repetition of similar incidents.

(e) The property administrator shall ensure that the corrective actions taken by the contractor under paragraph (d)(5) of this section satisfactorily address system weaknesses.

(f) The contracting officer shall make a determination of contractor liability with a copy of the determination furnished to the contractor and the property administrator. Costs may be assessed against a contractor for physical inventory discrepancies or other instances of loss of Government property within the terms of the contract. Credit should only be applied if specific items reported as lost can be uniquely identified. General physical inventory write-ons are not to be used as a credit.

(g) If part of a designated contractor's personal property management system is found to be unsatisfactory, the property administrator shall increase surveillance of that part to prevent, to the extent possible, any loss, damage, destruction or unreasonable consumption of personal property. The property administrator shall give special attention to reasonably ensuring that any loss, damage, destruction or unreasonable consumption occurring during a period when a contractor's personal property management system is not approved is identified before approval or reinstatement of approval.

### § 109–1.5114 Use of non-Government-owned property.

Non-Government-owned personal property shall not be installed in, affixed to, or otherwise made a part of any Government-owned personal property when such action will adversely affect the operation or condition of the Government property.

### § 109–1.5148 Personal property management reports.

Annual personal property reports as required by 41 CFR 102 35.25 and internal DOE personal property reports must be submitted to the Office of Management at a date determined by the Property Executive.

## Subpart 109–1.52—Personal Property Management Program for Designated Contractors

### § 109–1.5200 Scope of subpart.

This subpart prescribes policy and responsibilities for the establishment, maintenance, and appraisal of designated contractors' programs for the management of personal property.

### § 109–1.5201 Policy.

(a) Designated contractors shall establish, implement, and maintain a system that provides for an efficient personal property management program. The system shall be consistent with the terms of the contract; prescribed policies, procedures, regulations, statutes, and instructions; and directions from the contracting officer.

(b) Designated contractors' personal property management systems shall not be considered acceptable until reviewed and approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(c) Designated contractors shall maintain their personal property management systems in writing. Revisions to the systems shall be approved in writing by the cognizant DOE contracting office in accordance with § 109–1.5205 of this subpart.

(d) Designated contractors shall include their personal property management system in their management surveillance or internal review program in order to identify weaknesses and functions requiring corrective action.

(e) Designated contractors are responsible and accountable for all Government personal property in the possession of subcontractors, and shall include appropriate provisions in their subcontracts and property management systems to assure that subcontractors establish and maintain efficient systems for the management of Government personal property in their possession in accordance with § 109–1.5204 of this subpart.

### § 109–1.5202 Establishment of a personal property holdings baseline.

(a) If the contractor is a new designated contractor, the contractor may accept the previous contractor's personal property records as a baseline or may perform a complete physical inventory of all personal property. This physical inventory is to be performed within the time period specified by the contracting officer or the contract, but no later than one year after the execution date of the contract. If the physical inventory is not accomplished within the allotted time frame, the previous contractor's records will be considered as the baseline.

(b) If any required physical inventories have not been accomplished within the time periods prescribed in § 109–1.5110(f) of this part, the new contractor shall either perform such physical inventories within 120 days of contract renegotiation, or accept the existing property records as the baseline.

### § 109–1.5203 Management of subcontractor-held personal property.

Designated contractors shall require those subcontractors provided Government-owned personal property to establish and maintain a system for the management of such property. As a minimum, a subcontractor's personal property management system shall provide for the following:

(a) Adequate records.

(b) Controls over acquisitions.

(c) Identification as Government-owned personal property.

(d) Physical inventories.

(e) Proper care, maintenance, and protection.

(f) Controls over personal property requiring special handling (*i.e.,* nuclear-related, proliferation-sensitive, hazardous, or contaminated property).

(g) Reporting, redistribution, and disposal of excess and surplus personal property.

(h) Accounting for personal property that is lost, damaged, destroyed, stolen, abandoned, or worn out.

(i) Periodic reports, including physical inventory results and total acquisition cost of Government property.

(j) An internal surveillance program, including periodic reviews, to ensure that personal property is being managed in accordance with established procedures.

### § 109–1.5204 Review and approval of a designated contractor's personal property management system.

(a) An initial review of a designated contractor's personal property management system shall be performed by the property administrator within one year after the execution date of the contract, except for contract extensions or renewals or when an existing contractor has been awarded a follow-on contract. The purpose of the review is to determine whether the contractor's system provides adequate protection, maintenance, utilization, and disposition of personal property, and reasonable assurance that the Department's personal property is safeguarded against waste, loss, unauthorized use, or misappropriation, in accordance with applicable statutes, regulations, contract terms and conditions, programmatic needs, and good business practices. If circumstances preclude completion of the initial review within the "within one year" initial review requirement, the property administrator shall request a deviation from the requirement in accordance with the provisions of § 109–1.110–50 of this part.

(b) If a designated contractor is the successor to a previous designated contractor and the contract award was based in part on the contractor's proposal to overhaul the existing personal property management system(s), the "within one year" initial review requirement may be extended based on:

(1) The scope of the overhaul; and

(2) An analysis of the cost to implement the overhaul within a year versus a proposed extended period.

(c) When an existing contract has been extended or renewed, or the designated contractor has been awarded a follow-on contract, an initial review of the contractor's personal property management system is not required. In such cases, the established appraisal schedule will continue to be followed as prescribed in paragraph (d) of this section.

(d) At a minimum of every three years after the date of approval of a designated contractor's property management system, the OPMO/PA shall make an appraisal of the personal property management operation of the contractor. The purpose of the appraisal is to determine if the contractor is managing personal property in accordance with its previously approved system and procedures, and to establish whether such procedures are efficient. The appraisal may be based on a formal comprehensive appraisal or a series of formal appraisals of the functional segments of the contractor's operation.

(e) A designated contractor's property management system shall be approved, conditionally approved, or disapproved in writing by the head of the field organization with advice of the contracting officer, property administrator, OPMO, legal counsel, and appropriate program officials. Approval authority may be redelegated to the contracting officer or OPMO/PA. Conditional approval and disapproval authority cannot be redelegated. When a system is conditionally approved or disapproved, the property administrator or contracting officer shall advise the contractor, in writing, of deficiencies that need to be corrected, and a time schedule established for completion of corrective actions.

(f) Appropriate follow-up will be made by the property administrator to ensure that corrective actions have been initiated and completed.

(g) When a determination has been made by the property administrator that all major system deficiencies identified in the review or appraisal have been corrected, the head of the field organization shall withdraw the conditional approval or disapproval, and approve the system with the concurrence of the OPMO/PA. The approval shall be in writing and addressed to appropriate contractor management.

(h) The property administrator shall maintain a copy of all designated contractor personal property management system appraisals and approvals in such manner as to be readily available to investigative and external review teams.

### § 109–1.5205 Personal property management system changes.

Any proposed significant change to a designated contractor's approved personal property management system shall be reviewed by the property administrator at the earliest possible time. Such changes should then be approved in writing on an interim basis, or disapproved in writing, by the property administrator as appropriate.

## Subpart 109–1.53—Management of High Risk Personal Property

### § 109–1.5300 Scope of subpart.

(a) This subpart provides identification, accounting, control, and disposal policy guidance for the following categories of high risk personal property: Especially designed or prepared property, export controlled property, nuclear weapon components or weapon-like components, and proliferation sensitive property. The guidance is intended to ensure that the disposition of these categories of high risk personal property does not adversely affect the national security or nuclear nonproliferation objectives of the United States.

(b) The other categories of high risk personal property are controlled by other life cycle management programs and procedures monitored by other Departmental elements.

### § 109–1.5301 Applicability.

This subpart is applicable to all DOE organizations which purchase, manage or dispose of Government personal property, or contract for the management of Government facilities, programs, or related services, which may directly or indirectly require the purchase, management, or disposal of Government-owned personal property. Using the high-risk personal property control requirements in this subpart as guidance, Program Secretarial Officer (PSO) or OPMOs/PAs shall ensure that designated contractors and financial assistance recipients are responsible for developing a cost effective high-risk property management system, covering all operational responsibilities enumerated in this subpart.

### § 109–1.5302 Policies.

(a) It is the responsibility of DOE organizations and designated contractors to manage and control Government-owned high risk personal property in an efficient manner. High-risk personal property will be managed throughout its life cycle so as to protect public and DOE personnel safety and to advance the national security and the nuclear nonproliferation objectives of the U.S. Government.

(b) The disposition of high risk property is subject to special considerations. Items of high risk property may present significant risks to the national security and nuclear nonproliferation objectives of the Government which must be evaluated. Organizations will identify high risk property and control its disposition to eliminate or mitigate such risks. In no case shall property be transferred or disposed unless it receives a high risk assessment and is handled accordingly.

### § 109–1.5303 Procedures.

(a) *Identification, marking and control.* To ensure the appropriate treatment of property at its disposal and to prevent inadvertent, uncontrolled release of high risk property, property should be assessed and evaluated as high risk property as early in its life cycle as practical.

(1) Newly acquired high risk personal property shall be identified and tracked during the acquisition process and marked upon receipt.

(2) All personal property shall be reviewed for high risk identification, marking, and database entry during regularly scheduled physical inventories, unless access to the property is difficult or impractical because the property is a component of a larger assembly, a complex operating system, or an older facility. The review of this property will be completed, prior to disposition, when replacing components or when operating systems and facilities are decommissioned and dismantling.

(3) High risk personal property which by its nature cannot be marked, such as stores items and metal stock, is exempt from this requirement. However, personal property management programs should contain documentation on the characterization of this property as high risk.

(b) *Disposition of high risk property.* (1) Prior to disposition, all personal property, materials or data will be assessed to determine:

(i) Whether it should be characterized as high risk, and

(ii) What actions are necessary to ensure compliance with applicable national security or nonproliferation controls.

(2) The DOE or designated contractor property management organization may not process high risk personal property into a reutilization/disposal program without performing the reviews prescribed by the local high risk property management system. The reviews must be properly documented, and all appropriate certifications and clearances received, in accordance with the approved site or facility personal property management program.

(3) The disposition (including demilitarization of items on the Munitions List) and handling of high risk personal property are subject to applicable provisions of subchapter H of the FPMR/FMR, subchapter H of this chapter, and the DOE Guidelines on Export Control and Nonproliferation.

(4) All applicable documentation, including records concerning the property's categorization as high risk, shall be included as part of the property transfer. The documentation shall be included with all transfers within, or external to, DOE.

(5) Unless an alternative disposition option appears to be in the best interest of the Government, surplus Trigger List components, equipment, and materials and nuclear weapon components shall either be sold for scrap after being rendered useless for their originally intended purpose or destroyed, with the destruction verified and documented. Requests for approval of an alternative disposition may be made through the cognizant Assistant Secretary to the Director of the Office of Nonproliferation and National Security.

(6) The following Export Restriction Notice, or approved equivalent notice, shall be included in all transfers, sales, or other offerings:

**Export Restriction Notice**

The use, disposition, export and re-export of this property are subject to all applicable U.S. laws and regulations, including the Atomic Energy Act of 1954, as amended; the Arms Export Control Act (22 U.S.C. 2751 *et seq.*); the Export Administration Act of 1979 as continued under the International Emergency Economic Powers Act (Title II of Pub. L. 95–223, 91 Stat. 1626, October 28, 1977); Trading with the Enemy Act (50 U.S.C. 4305) as amended by the Foreign Assistance Act of 1961); Assistance to Foreign Atomic Energy Activities (10 CFR part 810); Export and Import of Nuclear Equipment and Material (10 CFR part 110); International Traffic in Arms Regulations (22 CFR parts 120 *et seq.*); Export Administration Regulations (15 CFR part 730 *et seq.*);.); and the Espionage Act (37 U.S.C. 791 *et seq.*) which among other things, prohibit:

a. The making of false statements and concealment of any material information regarding the use or disposition, export or re-export of the property; and

b. Any use or disposition, export or re-export of the property which is not authorized in accordance with the provisions of this agreement.

### § 109–1.5304 Deviations.

(a) Life cycle control determinations. When the PSO approves a contractor program containing controls, other than life cycle control consistent with this subpart, the decision shall be justified in writing and a copy sent to the Office of Management. A PSO's decision not to provide life-cycle control should take into account:

(1) The nature and extent of high risk property typically purchased or otherwise brought to a DOE or designated contractor facility or site;

(2) The projected stability of DOE and designated contractor operations; and

(3) The degree of confidence in the property control measures available at disposition.

(b) Certain transfers, sales, or other offerings of high risk personal property may require special conditions or specific restrictions as determined necessary by the property custodian or cognizant program office.

(c) Requests for deviations from the requirements of this subpart may be made through the cognizant PSO to the Office of Management.

## PART 109–6—MISCELLANEOUS REGULATIONS

### Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

Sec.
109–6.400 Scope and applicability.
109–6.400–50 Instructions to DOE passenger carrier operators.
109–6.402 Policy.
109–6.450 Statutory provisions.

**Authority:** Sec. 205(c), 63 Stat. 390 (40 U.S.C. 121; 31 U.S.C. 1344(e)(1).

### Subpart 109–6.4—Official Use of Government Passenger Carriers Between Residence and Place of Employment

### § 109–6.400 Scope and applicability.

(a) With the exception of § 109–6.400–50, the provisions of this subpart and 41 CFR part 102–5 do not apply to designated contractors. Official use provisions applicable to these contractors are contained in § 109–38.3 of this chapter.

(b) When an employee on temporary duty is authorized to travel by Government motor vehicle, and in the interest of the Government, is scheduled to depart before the beginning of regular working hours, or if there will be a significant savings in time, a Government motor vehicle may be issued at the close of the preceding working day. Such authorizations must be submitted to the fleet manager to ensure proper use of motor vehicles during non-duty hours. Similarly, when scheduled to return after the close of working hours, the motor vehicle may be returned the next regular working day. This use of a Government motor vehicle is not regarded as prohibited by 31 U.S.C. 1344 (25 Comp. Gen. 844(1946)).

### § 109–6.400–50 Instructions to DOE passenger carrier operators.

DOE offices shall ensure that DOE employees operating Government motor vehicles are informed concerning:

(a) The statutory requirement that Government motor vehicles shall be used only for official purposes;

(b) Personal responsibility for safe driving and operation of Government motor vehicles, and for compliance with Federal, state, and local laws and regulations, and all accident reporting requirements;

(c) The need to possess a valid state, District of Columbia, or commonwealth operator's license or permit for the type of vehicle to be operated and some form of agency identification. Check for specific details within your state laws regarding vehicle operator's licenses from foreign countries which may be valid in certain States;

(d) The penalties for unauthorized use of Government motor vehicles;

(e) The prohibition against providing transportation to strangers or hitchhikers;

(f) The proper care, control and use of Government credit card and vehicle keys;

(g) Mandatory use of seat belts by each employee operating or riding in a Government motor vehicle;

(h) The prohibition against the use of tobacco products in GSA-Interagency Fleet Management System (IFMS) motor vehicles;

(i) Any other duties and responsibilities assigned to operators with regard to the use, care, operation, and maintenance of Government motor vehicles;

(j) The potential income tax liability when they use a Government motor vehicle for transportation between residence and place of employment; and

(k) Protection for DOE employees under the Federal Tort Claims Act when acting within the scope of their employment.

(l) The prohibition against text messaging while operating a Government vehicle, or any vehicle while on Government business, as set forth under Executive Order 13513; and

(m) See 31 U.S.C. 1344 and 41 CFR 301–10.201 for allowable use of Government vehicles while on temporary duty or official travel orders.

### § 109–6.402 Policy.

(a) It is DOE policy that Government motor vehicles operated by DOE employees are to be used only for official Government purposes or for incidental purposes as prescribed in this section. The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall establish appropriate controls to ensure that the use of a Government motor vehicle for transportation between an employee's residence and place of employment is in accordance with the provisions of 41 CFR part 102–5 and this subpart.

(b) It is DOE policy that space in a Government motor vehicle used for home-to-work transportation may be shared with a spouse, relative, or friend in accordance with the restrictions contained in 41 CFR 102–5.105.

### § 109–6.450 Statutory provisions.

(a) In accordance with 31 U.S.C. 1349(b), any officer or employee of the Government who willfully uses or authorizes the use of a Government passenger motor vehicle for other than official purposes shall be suspended from duty by the head of the department concerned, without compensation, for not less than one month and shall be suspended for a longer period or summarily removed from office if circumstances warrant.

(b) Under the provisions of 18 U.S.C. 641, any person who knowingly misuses any Government property (including Government motor vehicles) may be subject to criminal prosecution and, upon conviction, to fines or imprisonment.

## PART 109–25—GENERAL

### Subpart 109–25.1—General Policies

Sec.
109–25–109–1 Identification of idle equipment.
109–25–109–2 Equipment pools.
109–25.302 Office furniture, furnishings, and equipment.
109–25.350 Furnishing of Government clothing and individual equipment.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

### Subpart 109–25.1—General Policies

### § 109–25.109–1 Identification of idle equipment.

At a minimum, management walk-throughs shall be conducted to provide for coverage of all operating and storage areas at least once every two years to identify idle and unneeded personal property.

### § 109–25.109–2 Equipment pools.

(a)–(c) [Reserved]

(d) The report on the use and effectiveness of equipment pools shall be submitted to the head of the DOE office at the discretion of that official. However, documentation of evaluations of pools shall be maintained and made available for review by appropriate contractor management, DOE offices, and audit teams.

(e) Program Secretarial Officer (PSO) shall require periodic independent reviews of equipment pool operations.

### § 109–25.302 Office furniture, furnishings, and equipment.

The Director, Office of Management, Program Secretarial Officer (PSO), and designated contractors shall establish criteria for the use of office furniture, furnishings, and equipment.

### § 109–25.350 Furnishing of Government clothing and individual equipment.

(a) Government-owned clothing and individual equipment may be furnished to employees:

(1) For protection from physical injury or occupational disease; or

(2) When employees could not reasonably be required to furnish them as a part of the personal clothing and equipment needed to perform the regular duties of the position to which they are assigned or for which services were engaged.

(b) This section does not apply to uniforms or uniform allowances under the Federal Employees Uniform Allowance Act of 1954, 84 Public Law 37, as amended.

## PART 109–26—PROCUREMENT SOURCES AND PROGRAM

**Subpart 109–26.2—Federal Requisitioning System**

Sec.
109–26.203 Activity address codes.

**Subpart 109–26.5—GSA Procurement Programs**

109–26.501 Purchase of new motor vehicles.
109–26.501–1 General.
109–26.501–4 Submission of orders.
109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.
109–26.501–51 Used vehicles.
109–26.501–52 Justification for purchase.
109–26.501–53 Acquisitions by transfer.
109–26.501–54 Communications equipment.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

## Subpart 109–26.2—Federal Requisitioning System

### § 109–26.203 Activity address codes.

(a) DOE field organizations designated by the Office of Management are responsible for processing routine activity code related transactions for specified groupings of field organizations. Each field organization in a specified grouping will forward their activity address code related transactions to the grouping's lead organization for processing. Each lead organization shall designate a point of contact who will:

(1) Verify the need, purpose, and validity of each transaction; and

(2) Be the specified grouping's authorized point of contact for dealing directly with GSA.

(b) The Office of Management is responsible for:

(1) All policy matters related to the issuance and control of activity address codes within DOE; and

(2) Furnishing the identity of the lead field organization points of contact to GSA.

## Subpart 109–26.5—GSA Procurement Programs

### § 109–26.501 Purchase of new motor vehicles.

### § 109–26.501–1 General.

(a) GSA is a mandatory source, under FPMR 101–26.501, for purchase of new non-tactical vehicles.

(b) Under unique circumstances which meet the criteria set forth under FPMR, motor vehicles may be purchased directly rather than through GSA when a waiver has been granted by GSA. The waiver request should be submitted directly to GSA and a copy forwarded to the Office of Management. GSA will grant waivers on a case-by-case basis, in accordance with FPMR 101–26.501(b)(c).

### § 109–26.501–4 Submission of orders.

An original and two copies of requisitions for passenger motor vehicles and law enforcement motor vehicles shall be forwarded with justification for purchase to the Office of Management, for approval and submission to GSA. Requisitions for all other types of motor vehicles shall be submitted directly to GSA.

### § 109–26.501–50 Authority and allocations for the acquisition of passenger motor vehicles.

(a) Authority for the acquisition of passenger motor vehicles is contained in the Department's annual appropriation act.

(b) DOE offices shall include in their budget submissions the number of passenger motor vehicles to be purchased during the fiscal year. The procurements will be identified as either additions to the motor vehicle fleet or replacement vehicles. A copy of the motor vehicle portion of the submission should be submitted to the Office of Management.

(c) To ensure that DOE does not exceed the number of passenger motor vehicles authorized to be acquired in any fiscal year, the Office of Management or designee shall allocate to and inform the field organizations in writing of the number of passenger motor vehicles which may be acquired under each appropriation. These allocations and the statutory cost limitations imposed on these motor vehicles shall not be exceeded.

(d) The motor vehicle fleet manager shall provide written certification to the OPMO that disposition action has been taken on replaced passenger motor vehicles. Such certification shall be provided no later than 30 days after the disposition of the vehicle. Replaced passenger motor vehicles shall not be retained in service after receipt of the replacement vehicle.

### § 109–26.501–51 Used vehicles.

Normally, DOE does not purchase or authorize contractors to purchase used motor vehicles. However, the Office of Management and Program Secretarial Officer (PSO) may authorize the purchase of used motor vehicles where justified by special circumstances, *e.g.,* when new motor vehicles are in short supply; motor vehicles are to be used for experimental or test purposes; or motor vehicles are acquired from exchange/sale. The statutory passenger motor vehicle allocation requirements shall apply to any purchase of used passenger motor vehicles except in the case of motor vehicles to be used exclusively for experimental or test purposes.

### § 109–26.501–52 Justification for purchase.

(a) Requisitions for additions to the passenger motor vehicle fleet must contain adequate written justification of need. Such justifications shall be prepared by the motor vehicle fleet manager and approved by the OPMO, and should include:

(1) A statement as to why the present fleet size is inadequate to support requirements;

(2) Efforts made to achieve maximum use of on-hand motor vehicles through pool arrangements, shuttle buses, and taxicabs;

(3) The programmatic requirement for the motor vehicles and the impact on the program/project if the requisitions are not filled;

(4) The established DOE or local utilization objectives used to evaluate the utilization of passenger motor

vehicles and whether the objectives have been approved by the OPMO; and

(5) The date of the last utilization review and the number of passenger motor vehicles which did not meet the established utilization objectives and the anticipated mileage to be achieved by the new motor vehicles.

(b) Requisitions for replacement passenger motor vehicles should include a statement that utilization, pools, shuttle buses and taxicabs have been considered by the motor vehicle fleet manager and the OPMO. Specific information on the identification, age and mileage of the motor vehicles should be included. When a passenger motor vehicle being replaced does not meet Federal replacement standards, a description of the condition of the vehicle should also be provided.

### § 109–26.501–53 Acquisitions by transfer.

(a) The acquisition of passenger motor vehicles by transfer from another Government agency or DOE organization shall be within the allocations prescribed in § 109–26.501–50 of this subpart.

(b) Passenger motor vehicles may be acquired by transfer provided they are:

(1) Considered as an addition to the motor vehicle fleet of the receiving office;

(2) Acquired for replacement purposes and an equal number of replaced motor vehicles are reported for disposal within 30 days;

(3) For temporary emergency needs exceeding three months and approved in writing by the DPMO; or

(4) For temporary emergency needs of three months or less in lieu of commercial rentals. These transfers will not count toward the allocation.

### § 109–26.501–54 Communications equipment.

Communications equipment considered to be essential for the accomplishment of security and safety responsibilities is exempt from the requirements of 41 CFR 101–26.501. The Fleet Manager shall approve the installation of communications equipment in motor vehicles.

## PART 109–27—INVENTORY MANAGEMENT

### Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

Sec.

109–27.5008 Control of drug substances.

### Subpart 109–27.51—Management of Precious Metals

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109–27.5105 Management reviews and audits.
109–27.5106 Precious metals pool.
109–27.5106–1 Purpose.
109–27.5106–2 Withdrawals.
109–27.5106–3 Returns.
109–27.5106–4 Withdrawals/returns forecasts.
109–27.5106–5 Assistance.
109–27.5107 Recovery of silver from hypo solution and scrap film.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254).

### Subpart 109–27.50—Inventory Management Policies, Procedures, and Guidelines

### § 109–27.5008 Control of drug substances.

Effective procedures and practices shall provide for the management and physical security of controlled substances from receipt to the point of use. Such procedures shall, as a minimum, provide for safeguarding, proper use, adequate records, and compliance with applicable laws and regulations.

### Subpart 109–27.51—Management of Precious Metals

### § 109–27.5100 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of purchased and recovered precious metals used to meet research, development, production, and other programmatic needs.

### § 109–27.5101 Definition.

*Precious metals* means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are gold, silver, and the platinum group metals—platinum, palladium, rhodium, iridium, ruthenium and osmium.

### § 109–27.5102 Policy.

DOE organizations and contractors shall establish effective procedures and practices for the administrative and physical control of precious metals in accordance with the provisions of this subpart.

### § 109–27.5103 Precious Metals Control Officer.

Each DOE organization and contractor holding precious metals shall designate in writing a Precious Metals Control Officer. This individual shall be the organization's primary point of contact concerning precious metals control and management, and shall be responsible for the following:

(a) Ensuring that the organization's precious metals activities are conducted in accordance with Departmental requirements.

(b) Maintaining an accurate list of the names of precious metals custodians.

(c) Providing instructions and training to precious metals custodians and/or users as necessary to assure compliance with regulatory responsibilities.

(d) Ensuring that physical inventories are performed as required by, and in accordance with, these regulations.

(e) Witnessing physical inventories.

(f) Performing periodic unannounced inspections of a custodian's precious metals inventory and records.

(g) Conducting an annual review of precious metals holdings to determine excess quantities.

(h) Preparing and submitting to the DOE Business Center for Precious Metals Sales and Recovery the annual forecast of anticipated withdrawals from, and returns to, the DOE precious metals pool.

(i) Conducting a program for the recovery of silver from used hypo solution and scrap film in accordance with 41 CFR 101–45.10 and § 109–45.10 of this chapter.

(j) Preparing and submitting of the annual report on recovery of silver from used hypo solution and scrap film as required by § 109–45.1002–2 of this chapter.

(k) Developing and issuing current authorization lists of persons authorized by management to withdraw precious metals from stockrooms.

### § 109–27.5104 Practices and procedures.

### § 109–27.5104–1 Acquisitions.

DOE organizations and contractors shall contact the DOE Business Center for Precious Metals Sales and Recovery to determine the availability of precious metals prior to acquisition on the open market.

### § 109–27.5104–2 Physical protection and storage.

Precious metals shall be afforded exceptional physical protection from time of receipt until disposition. Precious metals not in use shall be stored in a noncombustible combination locked repository with access limited to the designated custodian and an alternate. When there is a change in custodian or alternate having access to the repository, the combination shall be changed immediately.

### § 109–27.5104–3 [Reserved]

### § 109–27.5104–4 Physical inventories.

(a) Physical inventories shall be conducted annually by custodians, and witnessed by the Precious Metals Control Officer or his designee in accordance with 109–1.5110, Physical inventories frequency requirements.

(b) Precious metals not in use shall be inspected and weighed on calibrated scales. The inventoried weight and form shall be recorded on the physical inventory sheets by metal content and percent of metal. Metals in use in an experimental process or contaminated metals, neither of which can be weighed, shall be listed on the physical inventory sheet as observed and/or not observed as applicable.

(c) Any obviously idle or damaged metals should be recorded during the physical inventory. Justification for further retention of idle metals shall be required from the custodian and approved one level above the custodian, or disposed of in accordance with established procedures.

(d) The dollar value of physical inventory results shall be reconciled with the financial records. All adjustments shall be supported by appropriate adjustment reports, and approved by a responsible official.

### § 109–27.5104–5 Control and issue of stock.

Precious metals in stock are metals held in a central location and later issued to individuals when authorized requests are received. The following control procedures shall be followed for such metals:

(a) Stocks shall be held to a minimum consistent with efficient support to programs.

(b) The name and organization number of each individual authorized to withdraw precious metals, and the type and kind of metals, shall be prominently maintained in the stockroom. This authorization shall be issued by the Precious Metals Control Officer or his designee and updated annually. Issues of metals will be made only to authorized persons.

(c) Accurate records of all receipts, issues, returns, and disposals shall be maintained in the stockroom.

(d) Receipts for metal issues and returns to stock shall be provided to users. Such receipts, signed by the authorized requesting individual and the stockroom clerk, shall list the requesting organization, type and form of metal, quantity, and date of transaction.

### § 109–27.5104–6 Control by using organization.

(a) After receipt, the using organization shall provide necessary controls for precious metals. Materials shall be stored in a non-combustible, combination locked repository at all times except for quantities at the actual point of use.

(b) Each using organization shall maintain a log showing the individual user, type and form of metal, and the time, place, and purpose of each use. The log shall be kept in a locked repository when not in use.

(c) The logs and secured locked storage facilities are subject to review by the Precious Metals Control Officer and other audit or review staffs as required.

(d) Cognizant Departmental managers are responsible for assuring that minimum quantities of precious metals are withdrawn consistent with work requirements and that quantities excess to requirements are promptly returned to the stockroom.

### § 109–27.5105 Management reviews and audits.

(a) Unannounced inspections of custodian's precious metals inventory and records may be conducted between scheduled inventories.

(b) DOE organizations and contractors holding precious metals shall annually review the quantity of precious metals on hand to determine if the quantity is in excess of program requirements. Precious metals which are not needed for current or foreseeable requirements shall be promptly reported to the DOE precious metals pool. The results of this annual review are to be documented and entered into the precious metals inventory records.

### § 109–27.5106 Precious metals pool.

### § 109–27.5106–1 Purpose.

The purpose of the precious metals pool is to recycle, at a minimum cost to pool participants, DOE-owned precious metals within the Department and to dispose of DOE-owned precious metals that are excess to DOE needs. However, if the pool is unable to accept any potential precious metal return, the using activity will dispose of the precious metals through the disposal process specified in subchapter H of the FPMR/FMR and this regulation.

### § 109–27.5106–2 Withdrawals.

Pure metals are available through the Business Center for either direct shipment to DOE contractors or facilities to fulfill fabrication requirements. Contact the Business Center for available forms and quantity (*https://www.y12.doe.gov/missions/pmetal/*).

### § 109–27.5106–3 Returns.

All excess precious metals must be returned to the precious metals pool except as noted in § 109–27.5106–1 of this subpart. The pool is entirely dependent on metal returns; therefore, metal inventories should be maintained on an as-needed basis, and any excess metals must be returned to the pool for recycling. This includes precious metals in any form, including shapes, and scraps. Procedures have been developed by the precious metals pool contractor for metal returns, including storing, packaging, shipping, and security.

### § 109–27.5106–4 Withdrawals/returns forecasts.

The Business Center for Precious Metals Sales and Recovery will request annually from each DOE field organization its long-range forecast of anticipated withdrawals from the pool and returns to the pool.

### § 109–27.5106–5 Assistance.

The Business Center for Precious Metals Sales and Recovery operates the precious metals pool. DOE organizations and contractors may obtain specific information regarding the operation of the precious metals pool (operating contractor's name, address, and telephone number; processing charges; etc.) by contacting the Chief, Property Management Branch.

### § 109–27.5107 Recovery of silver from used hypo solution and scrap film.

The requirements for the recovery of silver from used hypo solution and scrap film are contained in § 109–45.1003 of this chapter.

## PART 109–28—STORAGE AND DISTRIBUTION

Sec.

109–28.000–50 Policy.
109–28.000–51 Storage guidelines.

### Subpart 109–28.3—Customer Supply Centers

109–28.306 Customer supply center (CSC) accounts and related controls.
109–28.306–3 Limitations on use.
109–28.306–5 Safeguards.

### Subpart 109–28.50—Management of Equipment Held for Future Projects

109–28.5000 Scope of subpart.
1109–28.5001 Definition.
109–28.5002 Objective.
109–28.5003 Records.
109–28.5004 Justification and review procedures.
109–28.5005 EHFFP program review.
109–28.5006 Utilization.

### Subpart 109–28.51—Management of Spare Equipment/Property

109–28.5100 Scope of subpart.
109–28.5101 Definition.
109–28.5102 Exclusions.
109–28.5103 Management policy.

**Authority:** 42 U.S.C. 7254.

#### § 109–28.000–50 Policy.

DOE offices and designated contractors shall:

(a) Establish storage space and warehousing services for the receipt, storage, issue, safekeeping and protection of Government property;

(b) Provide storage space and warehousing services in the most efficient manner consistent with program requirements; and

(c) Operate warehouses in accordance with generally accepted industrial management practices and principles.

#### § 109–28.000–51 Storage guidelines.

(a) Indoor storage areas should be arranged to obtain proper stock protection and maximum utilization of space within established floor load capacities.

(b) Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the Government's interest.

(c) Storage areas shall be prominently posted to clearly indicate that the property stored therein is U.S. Government property, with entrance to such areas restricted to authorized personnel only.

(d) Property in storage must be protected from fire, theft, deterioration, or destruction. In addition certain items require protection from dampness, heat, freezing, or extreme temperature changes. Other items must be stored away from light and odors, protected from vermin infestation, or stored separately because of their hazardous characteristics.

(e) Hazardous or contaminated property, including property having a history of use in an area where exposure to contaminated property may have occurred, shall not be commingled with non-contaminated property, but stored separately in accordance with instructions from the environmental, safety, and health officials.

(f) Unless inappropriate or impractical until declared excess, nuclear-related and proliferation-sensitive property shall be identified as such by use of a certification tag signed by an authorized program official (designated in writing with signature cards on file in the personal property management office). Such personal property shall not be commingled with other personal property, but stored separately in accordance with instructions from the cognizant program office.

### Subpart 109–28.3—Customer Supply Centers

#### § 109–28.306 Customer supply center (CSC) accounts and related controls.

#### § 109–28.306–3 Limitations on use.

DOE offices and designated contractors shall establish internal controls for ensuring that the use of CSC accounts is limited to the purchase of items for official Government use.

#### § 109–28.306–5 Safeguards.

DOE offices and designated contractors shall establish internal controls for ensuring that the customer access codes assigned for their accounts are properly protected.

### Subpart 109–28.50—Management of Equipment Held for Future Projects

#### § 109–28.5000 Scope of subpart.

This subpart provides policies, principles, and guidelines to be used in the management of equipment held for future projects (EHFFP).

#### § 109–28.5001 Definition.

*Equipment held for future projects* means items being retained, based on approved justifications, for a known future use, or for a potential use in planned projects.

#### § 109–28.5002 Objective.

The objective of the EHFFP program is to enable DOE offices and contractors to retain equipment not in use in current programs but which has a known or potential use in future DOE programs, while providing visibility on the types and amounts of equipment so retained through review and reporting procedures. It is intended that equipment be retained where economically justifiable for retention, considering cost of maintenance, replacement, obsolescence, storage, deterioration, or future availability; made available for use by others; and promptly excessed when no longer needed.

#### § 109–28.5003 Records.

Records of all EHFFP shall be maintained by the holding organization, including a listing of items with original date of classification as EHFFP; initial justifications for retaining EHFFP; rejustifications for retention; and documentation of reviews made by higher levels of management.

#### § 109–28.5004 Justification and review procedures.

Procedures shall provide for the following:

(a) The original decision to classify and retain equipment as EHFFP shall be justified in writing, providing sufficient detail to support the need for retention of the equipment. This justification will cite the project for which retained, the potential use to be made of the equipment, or other reasons for retention.

(b) The validity of the initial classification EHFFP shall be reviewed by management at a level above that of the individual making the initial determination.

(c) Retention of equipment as EHFFP must be rejustified annually to ensure that original justifications remain valid. The rejustifications will contain sufficient detail to support retention.

(d) When equipment is retained as EHFFP for longer than one year, the annual rejustification shall be reviewed at a level of management at least two levels above that of the individual making the determination to retain the EHFFP. Equipment retained as EHFFP for longer than three years should be approved by the head of the DOE field organization.

#### § 109–28.5005 EHFFP program review.

OPMOs or on-site DOE property administrators shall conduct periodic reviews in accordance 109–1.5110 Physical inventories of personal property frequency requirement to ensure that the EHFFP program is being conducted in accordance with established procedures DOE–FMR. Included in the review will be proper determinations of property as EHFFP, the validity of justifications for retaining EHFFP.

#### § 109–28.5006 Utilization.

It is DOE policy that, where practicable and consistent with program needs, EHFFP be considered as a source of supply to avoid or postpone acquisition.

### Subpart 109–28.51—Management of Spare Equipment/Property

#### § 109–28.5100 Scope of subpart.

This subpart provides policy guidance to be used in the management of spare equipment.

#### § 109–28.5101 Definition.

*Spare equipment/property* means items held as replacement spares for equipment in current use in DOE program.

### § 109–28.5102 Exclusions.

The following categories of equipment will not be considered spare equipment:

(a) Equipment/Property installed for emergency backup, *e.g.,* an emergency power facility, or an electric motor or a pump, any of which is in place and electrically connected.

(b) Equipment items properly classified as stores inventory.

### § 109–28.5103 Management policy.

(a) Procedures shall require the maintenance of records for spare equipment/property, cross-referenced to the location in the facility and the engineering drawing number. The purpose for retention shall be in the records.

(b) Reviews shall be made based on technical evaluations of the continued need for the equipment. The reviews should be held biennially. In addition, individual item levels shall be reviewed when spare equipment/Property is installed for use, the basic equipment is removed from service, or the process supported is changed.

(c) Procedures shall be established to provide for the identification and reporting of unneeded spare equipment/property as excess property.

## PART 109–30—FEDERAL CATALOG SYSTEM

Sec.
109–30.001–50 Applicability.

**Authority:** 42 U.S.C. 7254.

### § 109–30.001–50 Applicability.

The provisions of 41 CFR part 101–30 do not apply to designated contractors.

## PART 109–38—MOTOR EQUIPMENT MANAGEMENT

Sec.
109–38.000 Scope of part.
109–38.000–50 Policy.

### Subpart 109–38.0—Definition of Terms

109–38.001 Definitions.

### Subpart 109–38.1—Fuel Efficient Motor Vehicles

109–38.104 Fuel efficient passenger automobiles and light trucks.
109–38.105 Agency purchase and lease of motor vehicles.

### Subpart 109–38.2—Registration, Identification, and Exemptions

109–38.200 General requirements.
109–38.201 Registration and inspection.
109–38.201–50 Registration in foreign countries.
109–38.202 Tags.
109–38.202–2 Outside the District of Columbia.
109–38.202–3 Records.
109–38.202–50 Security.
109–38.203 Agency identification.
109–38.204 Exemptions.
109–38.204–1 Unlimited exemptions.
109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.
109–38.204–4 Report of exempted motor vehicles.
109–38.204–50 Records of exempted motor vehicles.

### Subpart 109–38.3—Official Use of Government Motor Vehicles

109–38.300 Scope.
109–38.301 Authorized use.
109–38.301–1 Contractors' use.
109–38.301–1.50 Authorization for transportation between residence and place of employment.
109–38.301–1.51 Emergency use.
109–38.301–1.52 Maintenance of records.
109–38.301–1.53 Responsibilities of motor vehicle operators.

### Subpart 109–38.4—Use and Replacement Standards

109–38.401 Use standards.
109–38.401–2 Use of self-service pumps.
109–38.402 Replacement standards.
109–38.402–50 Prompt disposal of replaced motor vehicles.
109–38.403 Responsibility for damages.
109–38.403–1 Policy.
109–38.403–2 Responsibility.
109–38.403–3 Exceptions.

### Subpart 109–38.5—Scheduled Maintenance

109–38.502 Guidelines.
109–38.502–50 DOE guidelines.

### Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

109–38.701 Transfer of title for Government-owned motor vehicles.
109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

### Subpart 109–38.8—Fleet Credit Card

109–38.800 General.
109–38.801 Obtaining fleet credit card.

### Subpart 109–38.9—Federal Motor Vehicle Fleet Report

109–38.902 Records.
109–38.903 Reporting of data.
109–38.903–50 Reporting DOE motor vehicle data.

### Subpart 109–38.51—Utilization of Motor Equipment

109–38.5100 Scope of subpart.
109–38.5101 Policy.
109–38.5102 Utilization controls and practices.
109–38.5103 Motor vehicle utilization standards.
109–38.5104 Other motor equipment utilization standards.
109–38.5105 Motor vehicle local use objectives.
109–38.5106 Application of motor vehicle use goals.

### Subpart 109–38.52—Watercraft

109–38.5200 Scope of subpart.
109–38.5201 Definition.
109–38.5202 Watercraft operations.
109–38.5203 Watercraft identification and numbers.

**Authority:** 42 U.S.C. 7254.

### § 109–38.000 Scope of part.

### § 109–38.000–50 Policy.

Motor vehicles and watercraft shall be acquired, maintained, and utilized in support of DOE programs in the minimum quantity required and in the most efficient manner consistent with program requirements, safety considerations, fuel economy, and applicable laws and regulations.

### Subpart 109–38.0—Definition of Terms

### § 109–38.001 Definitions.

*Experimental vehicles* means vehicles acquired solely for testing and research purposes or otherwise designated for experimental purposes. Such vehicles are to be the object of testing and research as differentiated from those used as vehicular support to testing and research. Experimental vehicles are not to be used for passenger carrying services unless required as part of a testing/evaluation program, and they are not subject to statutory price limitations or authorization limitations.

*Motor equipment* means any item of equipment which is self-propelled or drawn by mechanical power, including motor vehicles, motorcycles and scooters, construction and maintenance equipment, materials handling equipment, and watercraft.

*Motor vehicle* means any equipment, self-propelled or drawn by mechanical power, designed to be operated principally on highways in the transportation of property or passengers.

*Special purpose vehicles* means vehicles which are used or designed for specialized functions. These vehicles include, but are not limited to: Trailers, semi-trailers, other types of trailing equipment; trucks with permanently mounted equipment (such as aerial ladders); construction and other types of equipment set forth in Federal Supply Classification Group (FSCG) 38; material handling equipment set forth in FSCG 39; and firefighting equipment set forth in FSCG 42. For reporting purposes within DOE, motorcycles, motor scooters and all-terrain vehicles will also be reported as special purpose vehicles.

### Subpart 109–38.1—Fuel Efficient Motor Vehicles

### § 109–38.104 Fuel efficient passenger automobiles and light trucks.

(a) What size motor vehicles may we obtain? (See 41 CFR 102–34.50).

(b) All requests to obtain passenger automobiles larger than class IA, IB, or II (small, subcompact, or compact) shall be forwarded with justification to the DPMO for approval and certification for compliance with the fuel economy objectives listed in 41 CFR 102–34 Subpart B.

(c) Requests to exempt certain light trucks from the fleet average fuel economy calculations shall be forwarded with justification to the Office of Management for approval.

### § 109–38.105 Agency purchase and lease of motor vehicles.

(a) DOE activities shall submit a copy of all motor vehicle leases and purchases not procured through the GSA Automotive Commodity Center to GSA.

(b)–(c) [Reserved]

(d) DOE activities desiring to renew a commercial lease shall submit the requirement in writing to the Office of Management for approval prior to submission by field offices to GSA.

(e) DOE activities shall submit a copy of all lease agreements to GSA.

## Subpart 109–38.2—Registration, Identification, and Exemptions

### § 109–38.200 General requirements.

(a)–(e) [Reserved]

(f) Requests made pursuant to 41 CFR 102–34.155 through 102–34.170 for limited exemption from the requirement for displaying U.S. Government tags and other identification on motor vehicles, except for those vehicles exempted in accordance with 41 CFR 102–34.175 and § 109–38.204–1 of this subpart, shall be submitted to the Office of Management for approval. Each approved exemption must be renewed annually, and the Office of Management shall be notified promptly when the need for a previously authorized exemption no longer exists. Copies of certifications and cancellation notices required to be furnished to GSA pursuant to 41 CFR 102–34.160 will be transmitted to GSA.

(g) Requests for temporary removal and substitution of Government markings shall be submitted with justification to the DPMO for review and approval. Copies of the determination and justification required to be furnished to GSA will be transmitted to GSA by the DPMO.

### § 109–38.201 Registration and inspection.

### § 109–38.201–50 Registration in foreign countries.

Motor vehicles used in foreign countries are to be registered and carry license tags in accordance with the existing motor vehicle regulations of the country concerned. The person responsible for a motor vehicle in a foreign country shall make inquiry at the United States Embassy, Legation, or Consulate concerning the regulations that apply to registration, licensing, and operation of motor vehicles and shall be guided accordingly.

### § 109–38.202 Tags.

### § 109–38.202–2 Outside the District of Columbia.

The Office of Management and Program Secretarial Officer (PSO) shall make the determination concerning the use of tags outside the District of Columbia.

### § 109–38.202–3 Records.

(a) The Office of Management assigns "blocks" of U.S. Government license tag numbers to DOE organizations and maintains a current record of such assignments. Additional "blocks" will be assigned upon request.

(b) Each DOE direct operation and designated contractor shall maintain a current record of individual assignments of license tags to the motor vehicles under their jurisdiction.

### § 109–38.202–50 Security.

Unissued license tags shall be stored in a locked drawer, cabinet, or storage area with restricted access to prevent possible fraud or misuse. Tags which are damaged or unusable will be safeguarded until destroyed.

### § 109–38.203 Agency identification.

Standard DOE motor vehicle window decals (DOE Form 1530.1), and door decals to be used only on vehicles without windows (DOE Form 1530.2), are available from the Office of Administrative Services, Logistics Management Division, Headquarters, using DOE Form 4250.2, "Requisition for Supplies, Equipment or Services", or as directed by that office.

### § 109–38.204 Exemptions.

### § 109–38.204–1 Unlimited exemptions.

(a)–(f) [Reserved]

(g) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations may approve exemptions from the requirement for the display of U.S. Government license tags and other official identification for motor vehicles used for security or investigative purposes.

### § 109–38.204–3 Requests for exempted motor vehicles in the District of Columbia.

The Director, Office of Administrative Services is designated to approve requests for regular District of Columbia license tags, and furnishes annually the name and specimen signature of each representative authorized to approve such requests to the District of Columbia Department of Transportation.

### § 109–38.204–4 Report of exempted motor vehicles.

DOE offices shall provide upon request the necessary information to the DPMO to enable that office to submit a report of exempted vehicles.

### § 109–38.204–50 Records of exempted motor vehicles.

The Office of Management and Program Secretarial Officer (PSO) shall maintain records of motor vehicles exempted from displaying U.S. Government license tags and other identification. The records shall contain a listing, by type, of each exempted motor vehicle operated during the previous fiscal year, giving information for each motor vehicle on hand at the beginning of the year and each of those newly authorized during the year, including:

(a) Name and title of authorizing official (including any authorization by Headquarters and GSA);

(b) Date exemption was authorized;

(c) Justification for exemption and limitation on use of the exempted motor vehicle;

(d) Date of discontinuance for any exemption discontinued during the year; and

(e) Probable duration of exemptions for motor vehicles continuing in use.

## Subpart 109–38.3—Official Use of Government Motor Vehicles

### § 109–38.300 Scope.

This subpart prescribes the requirements governing the use of Government motor vehicles for official purposes by designated contractors.

### § 109–38.301 Authorized use.

The use of Government motor vehicles by officers and employees of the Government is governed by the provisions of 41 CFR 102–34 Subpart D and section 109–6.4 of this chapter.

### § 109–38.301–1 Contractors' use.

Program Secretarial Officer (PSO) shall ensure that provisions of the FPMR/FMR concerning contractor use of Government motor vehicles are complied with by their designated contractors.

### § 109–38.301–1.50 Authorization for transportation between residence and place of employment.

(a) Government motor vehicles shall not be used for transportation between residence and place of employment by designated contractor personnel except under extenuating circumstances specifically provided for under the terms of the contract. Examples of circumstances eligible for prior approval of home-to-work motor vehicle use which would be appropriate to include in the terms of the contract include: Use related to safety or security operations, use related to compelling operational considerations, and use determined as cost effective to DOE's interest. Under no circumstances shall the comfort and convenience, or managerial position, of contractor employees be considered justification for authorization of use.

(b) The use of Government motor vehicles for transportation between residence and place of employment (including sporadic use) by designated contractor personnel shall be approved in writing by the Head of the field organization or designee, with delegation no lower than the Director, Office of Management and Program Secretarial Officer (PSO) or the equivalent position at other DOE contracting activities provided that the individual is a warranted contracting officer. The contractor's request for approval shall include the name and title of the employee, the reason for the use, and the expected duration of the use. Each authorization is limited to one year, but can be extended for an unlimited number of additional one-year periods.

### § 109–38.301–1.51 Emergency use.

(a) Procedures for authorization of designated contractor use of Government motor vehicles in emergencies, including unscheduled overtime situations at remote sites where prior approval is not possible, shall be included in a contractor's approved property management procedures. The procedures shall include examples of emergency situations warranting such use. Records detailing instances of emergency use shall be maintained and review of all such emergency or overtime use must be certified through established audit procedures on at least an annual basis by the OPMO.

(b) In limiting the use of Government motor vehicles to official purposes, it is not intended to preclude their use in emergencies threatening loss of life or property. Such use shall be documented and the documentation retained for three years.

### § 109–38.301–1.52 Maintenance of records.

Designated contractors shall maintain logs or other records on the use of a Government motor vehicle for transportation between an employee's residence and place of employment. As a minimum, these logs shall indicate the employee's name, date of use, time of departure and arrival, miles driven, and names of other passengers. Cognizant finance offices shall be provided with applicable data on employees who utilize Government motor vehicles for such transportation for purposes of the Deficit Reduction Act of 1984 concerning the taxation of fringe benefits.

### § 109–38.301–1.53 Responsibilities of motor vehicle operators.

Designated contractors shall assure that their employees are aware of their responsibilities, identical to those listed in § 109–6.400–50 of this chapter for DOE employees, concerning the use and operation of Government motor vehicles.

## Subpart 109–38.4—Use and Replacement Standards

### § 109–38.401 Use standards.

### § 109–38.401–2 Use of self-service pumps.

It is DOE policy that motor vehicle operators shall use self-service pumps in accordance with the provisions of 41 CFR 101–38.401–2.

### § 109–38.402 Replacement standards.

(a) [Reserved]

(b) Motor vehicles may be replaced without regard to the replacement standards in 41 CFR 102–34 Subpart E only after certification by the Office of Management or the Head of the field organization for their respective organizations that a motor vehicle is beyond economical repair due to accident damage or wear caused by abnormal operating conditions.

### § 109–38.402–50 Prompt disposal of replaced motor vehicles.

A replaced motor vehicle shall be removed from service and disposed of prior to or as soon as practicable after delivery of the replacement motor vehicle to avoid concurrent operation of both motor vehicles.

### § 109–38.403 Responsibility for damages.

### § 109–38.403–1 Policy.

The policy for assigning responsibility for vehicle damage is to recover from users the costs for damages which would adversely affect the vehicle's resale.

### § 109–38.403–2 Responsibility.

The designated contractor will charge the using organization all costs resulting from damage, including vandalism, theft and parking lot damage to a DOE vehicle which occurs during the period that the vehicle is assigned to an employee of that organization. The charges recovered by the designated maintenance operation will be used to repair the vehicle. Other examples for which organizations will be charged are as follows:

(a) Damage caused by misuse or abuse inconsistent with normal operation and local conditions; or

(b) Repair costs which are incurred as a result of user's failure to obtain required preventative maintenance; or

(c) Unauthorized purchases or repairs, including credit card misuse, provided there is a clear, flagrant, and documented pattern of such occurrences.

### § 109–38.403–3 Exceptions.

Exceptions to § 109–38.403–2 of this subpart are as follows:

(a) As a result of the negligent or willful act of a party other than the organization or its employee, and the responsible party can be determined; or

(b) As a result of mechanical failure and the employee was not otherwise negligent. Proof of the failure must be provided; or

(c) As a result of normal wear comparable to similar vehicles.

## Subpart 109–38.5—Scheduled Maintenance

### § 109–38.502 Guidelines.

### § 109–38.502–50 DOE guidelines.

(a) Whenever practicable and cost effective, commercial service facilities shall be utilized for the maintenance of motor vehicles.

(b) Individual vehicle maintenance records shall be kept to provide records of past repairs, as a control against unnecessary repairs and excessive maintenance, and as an aid in determining the most economical time for replacement.

(c) One-time maintenance and repair limitations shall be established by the motor equipment fleet manager. To exceed repair limitations, approval of the motor equipment fleet manager is required.

(d)(1) Motor vehicles under manufacturer's warranty shall be repaired under the terms of the warranty.

(2) When motor vehicles are maintained in Government repair facilities in isolated locations that are distant from franchised dealer facilities, or when it is not practical to return the vehicles to a dealer, a billback agreement shall be sought from manufacturers to permit warranty work to be performed on a reimbursable basis.

## Subpart 109–38.7—Transfer, Storage, and Disposal of Motor Vehicles

### § 109–38.701 Transfer of title for Government-owned motor vehicles.

### § 109–38.701–50 Authority to sign Standard Form 97, The United States Government Certificate to Obtain Title to a Vehicle.

The Standard Form (SF) 97 shall be signed by an appropriate contracting officer. The Director, Office of Management and Program Secretarial Officer (PSO) for their respective organizations may delegate the authority to sign SF 97 to responsible DOE personnel under their jurisdiction.

## Subpart 109–38.8—Fleet Credit Card

### § 109–38.800 General.

(a)–(c) [Reserved]

(d) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall be responsible for establishing procedures to provide for the administrative control of fleet credit cards. Administrative control shall include, as a minimum:

(1) A reconciliation of on-hand credit cards with the inventory list provided by GSA,

(2) Providing motor vehicle operators with appropriate instructions regarding the use and protection of credit cards against theft and misuse,

(3) The taking of reasonable precautions in the event a fleet credit card is lost or stolen to minimize the opportunity of purchases being made by unauthorized persons, including notification to the paying office of the loss or theft,

(4) Validation of credit card charges to ensure they are for official use only items, and

### § 109–38.801 Obtaining fleet credit card.

A dedicated fleet credit card is issued with each GSA-leased motor vehicle. DOE offices electing to use fleet credit cards for agency-owned vehicles and motor equipment shall request the assignment of new accounts from the Office of Management. Following the assignment, DOE organizations shall submit orders for issuance of fleet credit cards in accordance with the instructions provided by GSA.

## Subpart 109–38.9—Federal Motor Vehicle Fleet Report

### § 109–38.902 Records.

The Office of Management and OPMOs for their respective organizations shall establish adequate records for accounting and reporting purposes.

### § 109–38.903 Reporting of data.

### § 109–38.903–50 Reporting DOE motor vehicle data.

See 41 CFR 102–34 Subpart J.

## Subpart 109–38.51—Utilization of Motor Equipment

### § 109–38.5100 Scope of subpart.

This subpart prescribes policies and procedures concerning the utilization of motor equipment.

### § 109–38.5101 Policy.

It is DOE policy to keep the number of motor vehicles and other motor equipment at the minimum needed to satisfy programmatic requirements. To attain this goal, controls and practices shall be established which will achieve the most practical and economical utilization of motor equipment. These controls and practices apply to all DOE-owned and commercially leased motor equipment and to GSA Interagency Fleet Management System motor vehicles.

### § 109–38.5102 Utilization controls and practices.

Controls and practices to be used by DOE organizations and designated contractors for achieving maximum economical utilization of motor equipment shall include, but not be limited to:

(a) The maximum use of motor equipment pools, taxicabs, shuttle buses, or other common service arrangements;

(b) The minimum, practicable assignment of motor equipment to individuals, groups, or specific organizational components;

(c) The maintenance of individual motor equipment use records, such as trip tickets or vehicle logs, or hours of use, as appropriate, showing sufficiently detailed information to evaluate appropriateness of assignment and adequacy of use being made. If one-time use of a motor vehicle is involved, such as assignments from motor pools, the individual's trip records must, as a minimum, identify the motor vehicle and show the name of the operator, dates, destination, time of departure and return, and mileage;

(d) The rotation of motor vehicles between high and low mileage assignments where practicable to maintain the fleet in the best overall replacement age and mileage balance and operating economy;

(e) The charging, if considered feasible, to the user organization for the cost of operating and maintaining motor vehicles assigned to groups or organizational components. These charge-back costs should include all direct and indirect costs of the motor vehicle fleet operation as determined by the field organization and contractor finance and accounting functions;

(f) The use of dual-purpose motor vehicles capable of hauling both personnel and light cargo whenever appropriate to avoid the need for two motor vehicles when one can serve both purposes. However, truck-type or van vehicles shall not be acquired for passenger use merely to avoid statutory limitations on the number of passenger motor vehicles which may be acquired;

(g) The use of motor scooters and motorcycles in place of higher cost motor vehicles for certain applications within plant areas, such as mail and messenger service and small parts and tool delivery. Their advantage, however, should be weighed carefully from the standpoint of overall economy (comparison with cost for other types of motor vehicles) and increased safety hazards, particularly when mingled with other motor vehicle traffic; and

(h) The use of electric vehicles for certain applications. The use of these vehicles is encouraged wherever it is feasible to use them to further the goal of fuel conservation.

### § 109–38.5103 Motor vehicle utilization standards.

(a) The following average utilization standards are established for DOE as objectives for those motor vehicles operated generally for those purposes for which acquired:

(1) Sedans and station wagons, general purpose use—12,000 miles per year.

(2) Light trucks (4 x 2's) and general purpose vehicles, one ton and under (less than 12,500 GVWR)—10,000 miles per year.

(3) Medium trucks and general purpose vehicles, 1½ ton through 2½ ton (12,500 to 23,999 GVWR)—7,500 miles per year.

(4) Heavy trucks and general purpose vehicles, three ton and over (24,000 GVWR and over)—7,500 miles per year.

(5) Truck tractors—10,000 miles per year.

(6) All-wheel-drive vehicles—7,500 miles per year.

(7) Other motor vehicles—No utilization standards are established for other trucks, ambulances, buses, law enforcement motor vehicles, and special purpose vehicles. The use of these motor vehicles shall be reviewed at least annually by the motor equipment fleet manager and action shall be taken and documented to verify that the motor vehicles are required to meet programmatic, health, safety, or security requirements.

(b) When operating circumstances prevent the above motor vehicle utilization standards from being met, local use objectives must be established and met as prescribed in § 109–38.5105 of this subpart.

### § 109–38.5104 Other motor equipment utilization standards.

No utilization standards are established for motor equipment other than motor vehicles. Each DOE office should establish through an agreement between the fleet manager and the OPMO utilization criteria for other motor equipment including heavy mobile equipment and review, adjust, and approve such criteria annually. Utilization of various classifications of other motor equipment can be measured through various statistics including miles, hours of use, number of trips, and fuel consumption. A utilization review of other motor equipment shall be performed at least annually by the motor equipment fleet manager to justify retainment or disposition of excess equipment not needed to fulfill Departmental, programmatic, health, safety, or security requirements.

### § 109–38.5105 Motor vehicle local use objectives.

(a) Individual motor vehicle utilization cannot always be measured or evaluated strictly on the basis of miles operated or against any Department-wide mileage standard. For example, light trucks specifically fitted for use by a plumber, welder, etc., in the performance of daily work assignments, would have uniquely tailored use objectives, different from those set forth for a truck used for general purposes. Accordingly, efficient local use objectives, which represent practical units of measurement for motor vehicle utilization and for planning and evaluating future motor vehicle requirements, must be established and documented by the Organizational Motor Equipment Fleet Manager. The objectives should take into consideration past performance, future requirements, geographical disbursement, and special operating requirements.

(b) These objectives shall be reviewed and adjusted as appropriate, but not less often than annually, by the motor equipment fleet manager. The reviews shall be documented. The Organizational Motor Equipment Fleet Manager is responsible for reviewing and approving in writing all proposed local use objectives.

### § 109–38.5106 Application of motor vehicle use goals.

(a) At least annually, the motor equipment fleet manager will review motor vehicle utilization statistics and all motor vehicles failing to meet the applicable DOE utilization standard or local use objective must be identified.

(b) Prompt action must be initiated to:

(1) Reassign the underutilized motor vehicles;

(2) Dispose of the underutilized motor vehicles; or

(3) Obtain a special justification from users documenting their continued requirement for the motor vehicle and any proposed actions to improve utilization. Any requirement for underutilized motor vehicles which the motor equipment fleet manager proposes to continue in its assignment, must be submitted in writing to the Organizational Motor Equipment Fleet Manager for approval.

(c) Both Department-wide standards and local use objectives should be applied in such a manner that their application does not stimulate motor vehicle use for the purpose of meeting the objective. The ultimate standard against which motor vehicle use must be measured is that the minimum number of motor vehicles will be retained to satisfy program requirements.

## Subpart 109–38.52—Watercraft

### § 109–38.5200 Scope of subpart.

This subpart establishes basic policies and procedures that apply to the management of watercraft operated by DOE organizations and designated contractors. The head of each Departmental organization operating watercraft shall issue such supplemental instructions as may be needed to ensure the efficient use and management of watercraft.

### § 109–38.5201 Definition.

As used in this subpart the following definition applies:

*Watercraft* means any vessel used to transport persons or material on water.

### § 109–38.5202 Watercraft operations.

(a) No person may operate a watercraft on a waterway until skill of operation and basic watercraft knowledge have been demonstrated.

(b) Operators of watercraft shall check the vessel to ensure that necessary equipment required by laws applicable to the area of operation are present, properly stowed, and in proper working order.

(c) Operators shall comply with all applicable Federal, state, and local laws pertaining to the operation of watercraft.

(d) Operators shall not use watercraft or carry passengers except in the performance of official Departmental assignments.

### § 109–38.5203 Watercraft identification and numbers.

Watercraft in the custody of DOE or designated contractors shall display identifying numbers, whether issued by the U.S. Coast Guard, State, or local field organization, in accordance with applicable requirements.

# PART 109–39—INTERAGENCY FLEET MANAGEMENT SYSTEMS

## Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

Sec.

109–39.101 Notice of intention to begin a study.
109–39.101–1 Agency cooperation.
109–39.103 Agency appeals.
109–39.105 Discontinuance or curtailment of service.
109–39.105–2 Agency requests to withdraw participation.
109–39.106 Unlimited exemptions.
109–39.107 Limited exemptions.

## Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

109–39.300 General.
109–39.301 Utilization guidelines.

**Authority:** 42 U.S.C. 7254.

## Subpart 109–39.1—Establishment, Modification, and Discontinuance of Interagency Fleet Management Systems

### § 109–39.101 Notice of intention to begin a study.

### § 109–39.101–1 Agency cooperation.

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate representatives to coordinate with GSA concerning the establishment of a GSA fleet management system to serve their organization.

### § 109–39.103 Agency appeals.

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations may appeal, or request exemption from, a determination made by GSA concerning the establishment of a fleet management system. A copy of the appeal or request shall be forwarded to the DPMO.

### § 109–39.105 Discontinuance or curtailment of service.

### § 109–39.105–2 Agency requests to withdraw participation.

Should circumstances arise that would tend to justify discontinuance or curtailment of participation by a DOE organization of a given interagency fleet management system, the participating organization should forward complete details to the DPMO for consideration and possible referral to the Administrator of General Services.

### § 109–39.106 Unlimited exemptions.

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall make the determination that an unlimited exemption from inclusion of a motor vehicle in a fleet management system is warranted. A copy of the determination shall be forwarded to GSA and to the Office of Management.

### § 109–39.107 Limited exemptions.

The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall seek limited exemptions from the fleet management system.

## Subpart 109–39.3—Use and Care of GSA Interagency Fleet Management System Vehicles

### § 109–39.300 General.

(a)–(c) [Reserved]

(d) Motor equipment fleet managers shall ensure that operators and passengers in GSA Interagency Fleet Management System (IFMS), agency-owned and agency commercially-leased motor vehicles are aware of the prohibition against the use of tobacco products in these vehicles.

### § 109–39.301 Utilization guidelines.

DOE activities utilizing GSA IFMS motor vehicles will receive and review vehicle utilization statistics in order to determine if miles traveled justify vehicle inventory levels. Activities should retain justification for the retention of vehicles not meeting DOE utilization guidelines or established local use objectives, as appropriate. Those vehicles not justified for retention shall be returned to the issuing GSA interagency fleet management center.

# PART 109–40—TRANSPORTATION AND TRAFFIC MANAGEMENT

### Subpart 109–40.1—General Provisions

Sec.
109–40.000 Scope of part.
109–40.000–50 Applicability to contractors.
109–40.102 Representation before regulatory bodies.
109–40.103 Selection of carriers.
109–40.103–1 Domestic transportation.
109–40.103–2 Disqualification and suspension of carriers.
109–40.103–3 International transportation.
109–40.104 Use of Government-owned transportation equipment.
109–40.109 Utilization of special contracts and agreements.
109–40.110 Assistance to economically disadvantaged transportation businesses.
109–40.110–1 Small business assistance.
109–40.110–2 Minority business enterprises.
109–40.112 Transportation factors in the location of Government facilities.
109–40.113 Insurance against transportation hazards.

### Subpart 109–40.3—Traffic Management

109–40.301 Traffic management functions administration.
109–40.302 Standard routing principle.
109–40.303–3 Most fuel efficient carrier/mode.
109–40.304 Rate tenders to the Government.
109–40.305–50 [Reserved].
109–40.305–50 Negotiations involving national security.
109–40.306–1 Recommended rate tender format.
109–40.306–2 Required shipping documents and annotations.
109–40.306–3 Distribution.

### Subpart 109–40.50—Bills of Lading

109–40.5000 Scope of subpart.
109–40.5001 Policy.
109–40.5002 Applicability.
109–40.5003 Commercial bills of lading.
109–40.5004 Government bills of lading.
109–40.5005 Description of property for shipment.

### Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

109–40.5100 Scope of subpart.
109–40.5101 Policy.

**Authority:** Sec. 161, as amended, 68 Stat. 948; 42 U.S.C. 2201; sec. 205, as amended, 63 Stat. 390; 40 U.S.C. 121; sec. 644, 91 Stat. 585, 42 U.S.C. 7254.

## Subpart 109–40.1—General Provisions

### § 109–40.000 Scope of part.

This part describes DOE regulations governing transportation and traffic management activities. It also covers arrangements for transportation and related services by bill of lading. These regulations are designed to ensure that all transportation and traffic management activities will be carried out in the manner most advantageous to the Government in terms of economy, efficiency, service, environment, safety and security.

### § 109–40.000–50 Applicability to contractors.

DOE–PMR 109–40, Transportation and Traffic Management, should be applied to cost-type contractors' transportation and traffic management activities. Departure by cost-type contractors from the provisions of these regulations may be authorized by the contracting officer provided the practices and procedures followed are consistent with the basic policy objectives in these regulations and DOE Order 460.2, Departmental Materials Transportation and Packaging Management, except to the extent such departure is prohibited by statute or executive order.

### § 109–40.102 Representation before regulatory bodies.

Participation in proceedings related to carrier applications to regulatory bodies for temporary or permanent authority to operate in specified geographical locations shall be confined to statements or testimony in support of a need for service and shall not extend to support of individual carriers or groups of carriers.

### § 109–40.103 Selection of carriers.

### § 109–40.103–1 Domestic transportation.

(a) Preferential treatment, normally, shall not be accorded to any mode of transportation (motor, rail, air, water) or to any particular carrier when arranging for domestic transportation services. However where, for valid reasons, a particular mode of transportation or a particular carrier within that mode must be used to meet specific program requirements and/or limitations, only that mode or carrier shall be considered. Examples of valid reasons for considering only a particular mode or carrier are:

(1) Where only a certain mode of transportation or individual carrier is able to provide the needed service or is able to meet the required delivery date; and

(2) Where the consignee's installation and related facilities preclude or are not conducive to service by all modes of transportation.

(b) The following factors are considered in determining whether a carrier or mode of transportation can meet DOE's transportation service requirements for each individual shipment:

(1) Availability and suitability of carrier equipment;

(2) Carrier terminal facilities at origin and destination;

(3) Pickup and delivery service, if required;

(4) Availability of required or accessorial and special services, if needed;

(5) Estimated time in transit;

(6) Record of past performance of the carrier; and

(7) Availability and suitability of transit privileges.

### § 109–40.103–2 Disqualification and suspension of carriers.

Disqualification and suspension are measures which exclude carriers from participation, for temporary periods of time, in DOE traffic. To ensure that the Government derives the benefits of full and free competition of interested carriers, disqualification and suspension shall not apply for any period of time longer than necessary to protect the interests of the Government.

### § 109–40.103–3 International transportation.

See 49 U.S.C. 41102 for a certificate required in nonuse of U.S. flag vessels or U.S. flag certificated air carriers.

(a) U.S.-flag ocean carriers. Arrangements for international ocean transportation services shall be made in accordance with the provisions of section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) concerning the use of privately owned U.S.-flag vessels.

(b) U.S.-flag certificated air carriers. Arrangements for international air transportation services shall be made in accordance with the provisions of section 5(a) of the International Air Transportation Fair Competition Practices Act of 1974 (49 U.S.C. 40118), which requires the use of U.S.-flag certificated air carriers for international travel of persons or property to the extent that services by these carriers is available.

### § 109–40.104 Use of Government-owned transportation equipment.

The preferred method of transporting property for the Government is through use of the facilities and services of commercial carriers. However, Government vehicles may be used when they are available to meet emergencies and accomplish program objectives which cannot be attained through use of commercial carriers.

### § 109–40.109 Utilization of special contracts and agreements.

From time to time special transportation agreements are entered into on a Government-wide or DOE-wide basis and are applicable, generally, to DOE shipments. The HQ DOE Manager, Transportation Operations and Traffic, will distribute information on such agreements to field offices as it becomes available.

### § 109–40.110 Assistance to economically disadvantaged transportation businesses.

### § 109–40.110–1 Small business assistance.

Consistent with the policies of the Government with respect to small businesses, DOE shall place with small business concerns a fair proportion of the total purchases and contracts for transportation and related services such as packing and crating, loading and unloading, and local drayage.

### § 109–40.110–2 Minority business enterprises.

Minority business enterprises shall have the maximum practical opportunity to participate in the performance of Government contracts. DOE shall identify transportation-related minority enterprises and encourage them to provide services that will support DOE's transportation requirements.

### § 109–40.112 Transportation factors in the location of Government facilities.

Transportation rate, charges, and commercial carrier transportation services shall be considered and evaluated prior to the selection of new site locations and during the planning and construction phases in the establishment of leased or relocated Government installations or facilities to ensure that consideration is given to the various transportation factors that may be involved in this relocation or deactivation.

### § 109–40.113 Insurance against transportation hazards.

The policy of the Government with respect to insurance of its property while in the possession of commercial carriers is set forth in 41 CFR 1–19.107.

## Subpart 109–40.3—Traffic Management

### § 109–40.301 Traffic management functions administration.

The DOE traffic management functions are accomplished by established field traffic offices under provisions of appropriate Departmental directives and Headquarters' staff traffic management supervision.

### § 109–40.302 Standard routing principle.

(a) Shipments shall be routed using the mode of transportation, or individual carriers within the mode, that can provide the required service at the lowest overall delivered cost to the Government.

(b) When more than one mode of transportation, or more than one carrier within a mode, can provide equally satisfactory service at the same overall cost the traffic shall be distributed as equitably as practicable among the modes and among the carriers within the modes.

### § 109–40.303–3 Most fuel efficient carrier/mode.

When more than one mode, or more than one carrier within a mode, can satisfy the service requirements of a specific shipment at the same lowest aggregate delivered cost, the carrier/mode determined to be the most fuel efficient will be selected. In determining the most fuel efficient carrier/mode, consideration will be given to such factors as use of the carrier's equipment in "turn around" service, proximity of carrier equipment to the shipping activity, and ability of the carrier to provide the most direct service to the destination points.

### § 109–40.304 Rate tenders to the Government.

Under the provisions of the Interstate Commerce Act (49 U.S.C. 10721), common carriers are permitted to submit to the Government tenders which contain rates lower than published tariff rates available to the general public. In addition, rates tenders may be applied to shipments other than those made by the Government provided the total benefits accrue to the Government; that is, provided the Government pays the charges or directly and completely reimburses the party that initially bears the freight charges (323 ICC 347 and 332 ICC 161).

### § 109–40.305–50 [Reserved]

### § 109–40.306–1 Recommended rate tender format.

Only those rate tenders which have been submitted by the carriers in writing shall be considered for use. Carriers should be encouraged to use the format "Uniform Tender of Rates and/or Charges for Transportation Services" when preparing and submitting rate tenders to the Government. Rate tenders that are ambiguous in meaning shall be resolved in favor of the Government.

### § 109–40.306–2 Required shipping documents and annotations.

(a) To qualify for transportation under section 10721 rates, property must be shipped by or for the Government on:

(1) Government bills of lading;

(2) Commercial bills of lading endorsed to show that these bills of lading are to be converted to Government bills of lading after delivery to the consignee;

(3) Commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following statement:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and are to be reimbursed by, the Government.

(b) When a rate tender is used for transportation furnished under a cost-reimbursable contract, the following endorsement shall be used on covering commercial bills of lading:

Transportation hereunder is for the U.S. Department of Energy, and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable contract number (insert contract number). This may be confirmed by contacting the agency representative at (name and telephone number).

See 332 ICC 161.

(c) To ensure proper application of a Government rate tender on all shipments qualifying for their use, the issuing officer shall show on the bills of lading covering such shipments the applicable rate tender number and carrier identification, such as: "Section 10721 tender, ABC Transportation Company, ICC No. 374." In addition, if commercial bills of lading are used, they shall be endorsed as specified above.

### § 109–40.306–3 Distribution.

Each agency receiving rate tenders shall promptly submit one signed copy to the Transportation and Public Utilities Service (WIT), General Services Administration, Washington, DC 20407. Also, two copies (including at least one signed copy) shall be promptly submitted to the General Services Administration (TA), Chester A. Arthur Building, Washington, DC 20406.

## Subpart 109–40.50—Bills of Lading

### § 109–40.5000 Scope of subpart.

This subpart sets forth the requirements under which commercial or Government bills of lading may be used.

### § 109–40.5001 Policy.

Generally DOE cost-type contractors will use commercial bills of lading in making shipments for the account of DOE. Cost-type contractors may be authorized by the contracting officer to use Government bills of lading if such use will be advantageous to the Government. Such authorizations shall be coordinated with the HQ DOE Manager, Transportation Operations and Traffic.

### § 109–40.5002 Applicability.

The policy and procedures set forth in this subpart shall be applied when DOE's cost-type contractors use commercial bills of lading.

### § 109–40.5003 Commercial bills of lading.

(a) DOE's cost-type contractors using commercial bills of lading in making shipments for the account of DOE shall include the following statement on all commercial bills of lading:

This shipment is for the account of the U.S. Government which will assume the freight charges and is subject to the terms and conditions set forth in the standard form of the U.S. Government bills of lading and to any available special rates or charges.

(b) The language in paragraph (a) of this section may be varied without materially changing its substance to satisfy the needs of particular cost-type contractors for the purpose of obtaining the benefit of the lowest available rates for the account of the Government.

(c) Where practicable, commercial bills of lading shall provide for consignment of a shipment to DOE c/o the cost-type contractor or by the contractor "for the DOE."

(d) Commercial bills of lading exceeding $10,000 issued by cost-type contractors shall be annotated with a typewritten, rubber stamp, or similar impression containing the following wording:

Equal Employment Opportunity. All provisions of Executive Order 11246, as amended by Executive Order 11375, and of the rules, regulations, and relevant orders of the Secretary of Labor are incorporated herein.

### § 109–40.5004 Government bills of lading.

In those instances where DOE cost-type contractors are authorized to use Government bills of lading, specific employees of cost-type contractors will be authorized by the contracting officer to issue such Government bills of lading (see Title V, U.S. Government Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies).

### § 109–40.5005 Description of property for shipment.

(a) Each shipment shall be described on the bill of lading or other shipping document as specified by the governing freight classification, carrier's tariff, or rate tender. Shipments shall be described as specifically as possible. Trade names such as "Foamite" or "Formica," or general terms such as "vehicles," "furniture," or "Government supplies," shall not be used as bill of lading descriptions.

(b) A shipment containing hazardous materials, such as explosives, radioactive materials, flammable liquids, flammable solids, oxidizers, or poison A or poison B, shall be prepared for shipment and described on bills of lading or other shipping documents in accordance with the Department of Transportation Hazardous Materials Regulation, 49 CFR, subchapter C.

## Subpart 109–40.51—Price-Anderson Coverage Certifications for Nuclear Shipments

### § 109–40.5100 Scope of subpart.

This subpart sets forth the policy for issuance of certifications regarding Price-Anderson coverage of particular shipments of nuclear materials.

### § 109–40.5101 Policy.

Upon request of a carrier, an appropriate certification will be issued by an authorized representative of the DOE to the carrier regarding the applicability of Price-Anderson indemnity to a particular shipment. Copies of such certifications, if performed by a Field Manager or a DOE cost-type contractor, shall be provided to the HQ DOE Manager, Transportation Operations and Traffic.

## SUBCHAPTER H—UTILIZATION AND DISPOSAL

# PART 109–42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

### Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

Sec.
109–42.1100.50 Scope of subpart.
109–42.1100.51 Policy.
109–42.1102–8 United States Munitions List items which require demilitarization.
109–42.1102–51 Suspect personal property.
109–42.1102–52 Low level contaminated personal property.

**Authority:** 40 U.S.C. 121.

## Subpart 109–42.11—Special Types of Hazardous Material and Certain Categories of Property

### § 109–42.1100.50 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and disposal outside of DOE of excess and surplus personal property which has been radioactively or chemically contaminated.

### § 109–42.1100.51 Policy.

When the holding organization determines it is appropriate to dispose of contaminated personal property, it shall be disposed of by DOE in accordance with appropriate Federal regulations governing radiation/chemical exposure and environmental contamination. In special cases where Federal regulations do not exist or apply, appropriate state and local regulations shall be followed.

### § 109–42.1102–8 United States Munitions List items which require demilitarization.

Program Secretarial Officer (PSO) shall determine demilitarization requirements regarding combat material and military personal property using DoD 4160.21–M–1, Defense Demilitarization Manual as a guide.

### § 109–42.1102–51 Suspect personal property.

(a) Excess personal property (including scrap) having a history of use in an area where radioactive or chemical contamination may occur shall be considered suspect and shall be monitored using appropriate instruments and techniques by qualified personnel of the DOE office or contractor generating the excess.

(b) With due consideration to the economic factors involved, every effort shall be made to reduce the level of contamination of excess or surplus personal property to the lowest practicable level. Contaminated personal property that exceeds applicable contamination standards shall not be utilized or disposed outside DOE.

(c) If contamination is suspected and the property is of such size, construction, or location as to make testing for contamination impossible, the property shall not be utilized or disposed outside of DOE.

### § 109–42.1102–52 Low level contaminated personal property.

If monitoring of suspect personal property indicates that contamination does not exceed applicable standards, it may be utilized and disposed of in the same manner as uncontaminated personal property, provided the guidance in § 109–45.5005–1(a) of this chapter has been considered. However, recipients shall be advised where levels of radioactive contamination require specific controls for shipment as provided in Department of Transportation Regulations (49 CFR parts 171–179) for shipment of radioactive personal property. In addition, when any contaminated personal property is screened within DOE, reported to GSA, or otherwise disposed of, the kind and degree of contamination must be plainly indicated on all pertinent documents.

## PART 109–43—UTILIZATION OF PERSONAL PROPERTY

Sec.

109–43.001 Definition.

**Subpart 109–43.1—General Provisions**

109–43.101 Agency utilization reviews.
109–43.103 Agency utilization officials.

**Subpart 109–43.3—Utilization of Excess**

109–43.302 Agency responsibility.
109–43.302–50 Utilization by designated contractors.
109–43.304 Reporting requirements.
109–43.304–1 Reporting.
109–43.304–1.50 DOE reutilization screening.
109–43.304–1.51 [Reserved]
109–43.304–2 [Reserved]
109–43.304–4 [Reserved]
109–43.305 [Reserved]
109–43.305–50 Nuclear-related and proliferation-sensitive personal property.
109–43.307 Items requiring special handling.
109–43.307–2 Hazardous materials.
109–43.307–2.50 Monitoring of hazardous personal property.
109–43.307–2.51 Holding hazardous personal property.
109–43.307–50 Export controlled personal property.
109–43.307–51 Classified personal property.
109–43.307–52 Nuclear-related or proliferation-sensitive personal property.
109–43.307–53 Information Technology (IT).
109–43.307–54 Unsafe personal property.
109–43.312 Use of excess personal property on cost-reimbursement contracts.
109–43.313 Use of excess personal property on cooperative agreements.
109–43.314 Use of excess personal property on grants.

**Subpart 109–43.5—Utilization of Foreign Excess Personal Property**

109–43.502 Holding agency responsibilities.

**Subpart 109–43.47—Reports**

109–43.4701 Performance reports.

**Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby**

109–43.5000 Scope of subpart.
109–43.5001 Definition.
109–43.5002 Reviews to determine need for retaining items.

**Authority:** 40 U.S.C. 121.

### § 109–43.001 Definition.

*DOE screening period* means the period of time that reportable existing personal property is screened throughout DOE for reutilization purposes and, for selected items, through the Used Laboratory Equipment Donation Program (LEDP).

## Subpart 109–43.1—General Provisions

### § 109–43.101 Agency utilization reviews.

DOE offices and designated contractors are responsible for continuously surveying property under their control to assure maximum use, and shall promptly identify property that is excess to their needs and make it available for use elsewhere.

### § 109–43.103 Agency utilization officials.

The Property Executive is designated as the DOE National Utilization Officer.

### § 109–43.302 Agency responsibility.

### § 109–43.302–50 Utilization by designated contractors.

Program Secretarial Officer (PSO) may authorize designated contractors to perform the functions pertaining to the utilization of excess personal property normally performed by a Federal agency, provided the designated contractors have written policies and procedures.

### § 109–43.304 Reporting requirements.

### § 109–43.304–1 Reporting.

### § 109–43.304–1.50 DOE reutilization screening.

(a) Personal property must be processed through DOE electronic internal screening prior to reporting excess personal property to GSA.

(b) An additional 30-day screening period shall be allocated for items eligible for screening by educational institutions through LEDP.

(c) Items in FSCG 66 (Instruments and Laboratory Equipment), 70 (General Purpose Information Processing Equipment (including firmware)), and 99 (Miscellaneous) are reportable.

(d) The Department of Energy National Utilization Officer (NUO) may authorize in exceptional or unusual cases when time is critical, screening of excess property may be accomplished by with due consideration given to the additional costs involved. Examples of situations when this method of screening would be used are when there is a requirement for quick disposal actions due to unplanned contract terminations or facilities closing; to alleviate the paying of storage costs; when storage space is critical; to process exchange/sale transactions; property dangerous to public health and safety; property determined to be classified or otherwise sensitive for reasons of national security (when classified communications facilities are used); or for hazardous materials which may not be disposed of outside of the Department.

(e) Concurrent DOE and Federal agency screening shall not be conducted.

### § 109–43.304–1.51 [Reserved]

### § 109–43.304–2 [Reserved]

### § 109–43.304–4 [Reserved]

### § 109–43.305 [Reserved]

### § 109–43.305–50 Nuclear-related and proliferation-sensitive personal property.

Nuclear-related and proliferation-sensitive property is not reportable and shall not be formally screened within DOE or reported to GSA.

### § 109–43.307 Items requiring special handling.

### § 109–43.307–2 Hazardous materials.

### § 109–43.307–2.50 Monitoring of hazardous personal property.

To provide assurance that hazardous personal property is not being inadvertently released from the site by transfer or sale to the public, all hazardous or suspected hazardous personal property shall be checked for contamination by environmental, safety, and health officials. Contamination-free personal property will be tagged with a certification tag authorizing release for transfer or sale. Contaminated personal property will be referred back to the program office for appropriate action.

### § 109–43.307–2.51 Holding hazardous personal property.

Excess or surplus hazardous personal property shall not be commingled with non-hazardous personal property while waiting disposition action.

### § 109–43.307–50 Export controlled personal property.

(a) When personal property that is subject to export controls is being exported directly by DOE (*e.g.,* a transfer of nuclear equipment or materials as part of a program of cooperation with another country), DOE or the DOE contractor must obtain the necessary export license.

(b) When personal property subject to export controls is transferred under work-for-others agreements, co-operative agreements, or technical programs, the recipients will be informed in writing that:

(1) The property is subject to export controls;

(2) They are responsible for obtaining export licenses or authorizations prior to transferring or moving the property to another country; and

(3) They are required to pass on export control guidance if they transfer the property to another domestic or foreign recipient.

### § 109–43.307–51 Classified personal property.

Classified personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be classified, or otherwise rendered unclassified, as determined by the cognizant program office, prior to any disposition action. The cognizant program office shall certify that appropriate action has been taken to declassify the personal property as required. Declassification shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

### § 109–43.307–52 Nuclear-related or proliferation-sensitive personal property.

(a) Recognizing that property disposal officials will not have the technical knowledge to identify nuclear-related and proliferation-sensitive personal property, all such personal property shall be physically tagged with a certification signed by an authorized program official at time of determination by the program office of the personal property as excess. Such an authorized official should be designated in writing with signature cards on file in the property office.

(b) Nuclear-related and proliferation-sensitive personal property which is excess to DOE needs shall be stripped of all characteristics which cause it to be nuclear-related or proliferation-sensitive personal property, as determined by the cognizant program office, prior to disposal. The cognizant program office shall certify that appropriate actions have been taken to strip the personal property as required, or shall provide the property disposal office with adequate instructions for stripping the items. Such action shall be accomplished in a manner which will preserve, so far as practicable, any civilian utility or commercial value of the personal property.

### § 109–43.307–53 Information Technology (IT).

All IT shall be sanitized before being transferred into excess to ensure that all data, information, and software has been removed from the equipment. Designated computer support personnel must indicate that the equipment has been sanitized by attaching a certification tag to the item. Sanitized IT will be utilized and disposed in accordance with the provisions of the FPMR/FMR.

### § 109–43.307–54 Unsafe personal property.

Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

### § 109–43.312 Use of excess personal property on cost-reimbursement contracts.

(a) [Reserved]

(b) It is DOE policy for designated contractors to use Government excess personal property to the maximum extent possible to reduce contract costs. However, the determination required in 41 CFR 101–43.312(b) does not apply to such contracts, and a DOE official is not required to execute transfer orders for authorized designated contractors. The procedures prescribed in 41 CFR 101–43.309–5 for execution of transfer orders apply.

### § 109–43.313 Use of excess personal property on cooperative agreements.

(a)–(c) [Reserved]

(d) Program Secretarial Officer (PSO) shall ensure that required records are maintained in a current status.

### § 109–43.314 Use of excess personal property on grants.

(a)–(e) [Reserved]

(f) Program Secretarial Officer (PSO) shall ensure that the records required by 41 CFR 101–43.314(f) are maintained.

## Subpart 109–43.5—Utilization of Foreign Excess Personal Property

### § 109–43.502 Holding agency responsibilities.

(a) [Reserved]

(b) Property which remains excess after utilization screening within the general foreign geographical area where the property is located shall be reported to the accountable field office or Headquarters program organization for consideration for return to the United States for further DOE or other Federal utilization. The decision to return property will be based on such factors as acquisition cost, residual value, condition, usefulness, and cost of transportation.

## Subpart 109–43.47—Reports

### § 109–43.4701 Performance reports.

(a)–(b) [Reserved]

(c) The annual report of personal property furnished (*e.g.,* transfers, gifts, loans, leases, license agreements, and sales) to non-Federal recipients, including elementary and secondary schools, is furnished to GSA in accordance with 41 CFR 102–38. Internal DOE personal property reports must be submitted to the Office of Management at the date determined by the Property Executive.

### Subpart 109–43.50—Utilization of Personal Property Held for Facilities in Standby

#### § 109–43.5000 Scope of subpart.

This subpart supplements 41 CFR part 101–43 by providing policies and procedures for the economic and efficient utilization of personal property associated with facilities placed in standby status.

#### § 109–43.5001 Definition.

*Facility in standby* means a complete plant or section of a plant, which is neither in service or declared excess.

#### § 109–43.5002 Reviews to determine need for retaining items.

Procedures and practices shall require an initial review at the time the plant is placed in standby to determine which items can be made available for use elsewhere within the established start-up criteria; periodic reviews (no less than biennially) to determine need for continued retention of property; and special reviews when a change in start-up time is made or when circumstances warrant. Such procedures should recognize that:

(a) Equipment, spares, stores items, and materials peculiar to a plant should be retained for possible future operation of the plant;

(b) Where practicable, common-use stores should be removed and used elsewhere; and

(c) Uninstalled equipment and other personal property not required should be utilized elsewhere on-site or be disposed of as excess.

## PART 109–44—DONATION OF PERSONAL PROPERTY

### Subpart 109–44.7—Donations of Property to Public Bodies

Sec.
109–44.701 Findings justifying donation to public bodies.
109–44.702 Donations to public bodies.
109–44.702–3 Hazardous materials.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 121.

### Subpart 109–44.7—Donations of Property to Public Bodies

#### § 109–44.701 Findings justifying donation to public bodies.

The Office of Management and Program Secretarial Officer (PSO) shall appoint officials to make required findings and reviews.

#### § 109–44.702 Donations to public bodies.

#### § 109–44.702–3 Hazardous materials.

The Office of Management and Heads of field organizations) shall be responsible for the safeguards, notifications, and certifications required by 41 CFR part 101–42 and part 109–42 of this chapter, as well as compliance with all other requirements therein.

## PART 109–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

### Subpart 109–45.1—General

Sec.
109–45.105 Exclusions and exemptions.
109–45.105–3 Exemptions.

### Subpart 109–45.3—Sale of Personal Property

109–45.300–50 Sales by designated contractors.
109–45.301–51 Export/import clause.
109–45.302 Sale to Government employees.
109–45.302–50 Sales to DOE employees and designated contractor employees.
109–45.303 Reporting property for sale.
109–45.303–3 Delivery.
109–45.304 Sales methods and procedures.
109–45.304–2 Negotiated sales and negotiated sales at fixed prices.
109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.
109–45.304–6 Reviewing authority.
109–45.304–50 Processing bids and awarding of contracts.
109–45.304–51 Documentation.
109–45.309 Special classes of property.
109–45.309–2.50 Hazardous property.
109–45.309–51 Export controlled property.
109–45.309–52 Classified property.
109–45.309–53 Nuclear-related or proliferation-sensitive property.
109–45.309–54 Information Technology (IT).
109–45.310 Antitrust laws.
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### Subpart 109–45.9—Abandonment or Destruction of Personal Property

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### Subpart 109–45.10—Recovery of Precious Metals

109–45.1002 Agency responsibilities.
109–45.1002–3 Precious metals recovery program monitor.
109–45.1003 Recovery of silver from precious metals bearing materials.
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### Subpart 109–45.47—Reports

109–45.4702 Negotiated sales reports.

### Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

109–45.5005 Disposal.
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109–45.5100 Scope of subpart.
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109–45.5104–1 General.
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109–45.5105 Reports.

### Subpart 109–45.1—General

#### § 109–45.105 Exclusions and exemptions.

#### § 109–45.105–3 Exemptions.

GSA, by letter dated May 28, 1965, exempted contractor inventory held by DOE designated contractors from the GSA conducted sales provisions of 41 CFR 101–45.

### Subpart 109–45.3—Sale of Personal Property

#### § 109–45.300–50 Sales by designated contractors.

Sales of surplus contractor inventory will be conducted by designated contractors when Program Secretarial Officer (PSO) determine that it is in the best interest of the Government. OPMOs and appropriate program officials shall perform sufficient oversight over these sales to ensure that personal property requiring special handling or program office certification is sold in accordance with regulatory requirements.

#### § 109–45.301–51 Export/import clause.

The following clause shall be included in all sales invitations for bid:

Personal property purchased from the U.S. Government may or may not be authorized for export/import from/into the country where the personal property is located. If export/import is allowed, the purchaser is solely responsible for obtaining required clearances or approvals. The purchaser also is required to provide to the appropriate party DOE's export control guidance if the property is resold or otherwise disposed.

#### § 109–45.302 Sale to Government employees.

#### § 109–45.302–50 Sales to DOE employees and designated contractor employees.

(a) DOE employees and employees of designated contractors shall be given the same opportunity to acquire Government personal property as is given to the general public, provided the employees warrant in writing prior to award that they have not either directly or indirectly:

(1) Obtained information not otherwise available to the general public regarding usage, condition, quality, or value of the personal property, or

(2) Participated in:

(i) The determination to dispose of the personal property;

(ii) The preparation of the personal property for sale; and

(iii) Determining the method of sale.

(b) Excess or otherwise unusable special, fitted clothing and other articles of personal property, acquired for the exclusive use of an individual employee, may be sold to the employee for the best price obtainable when the property is no longer required by the holding organization or the employee is terminated.

### § 109–45.303 Reporting property for sale.

### § 109–45.303–3 Delivery.

(a)–(b) [Reserved]

(c) Guidelines for signature authorization and control of blank copies of Standard Form 97, United States Government Certificate to Obtain Title to a Vehicle are contained in subpart 109–38.7 of this chapter.

### § 109–45.304 Sales methods and procedures.

### § 109–45.304–2 Negotiated sales and negotiated sales at fixed prices.

(a)(1) [Reserved]

(2) The head of each field organization shall designate a responsible person to approve negotiated sales by DOE direct operations.

(3) Requests for prior approval of negotiated sales by DOE direct operations shall be submitted with justification to the OPMO for review and forwarding to GSA for approval.

(b) [Reserved]

### § 109–45.304–2.50 Negotiated sales and negotiated sales at fixed prices by designated contractors.

(a) Negotiated sales by designated contractors of surplus contractor inventory may be made when the DOE contracting officer determines and documents prior to the sale that the use of this method of sale is justified on the basis of the circumstances enumerated below, provided that the Government's interests are adequately protected. These sales shall be at prices which are fair and reasonable and not less than the proceeds which could reasonably be expected to be obtained if the personal property was offered for competitive sale. Specific conditions justifying negotiated sales include:

(1) No acceptable bids have been received as a result of competitive bidding under a suitable advertised sale;

(2) Personal property is of such small value that the proceeds to be derived would not warrant the expense of a formal competitive sale;

(3) The disposal will be to a state, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the personal property and other satisfactory terms of disposal are obtained by negotiation;

(4) The specialized nature and limited use potential of the personal property would create negligible bidder interest;

(5) Removal of the personal property would result in a significant reduction in value, or the accrual of disproportionate expense in handling; or

(6) It can be clearly established that such action is in the best interests of the Government.

(b) When determined to be in the best interests of the Government, Program Secretarial Officer (PSO) may authorize fixed-price sales of surplus contractor inventory by designated contractors provided:

(1) The fair market value of the item to be sold does not exceed $15,000;

(2) Adequate procedures for publicizing such sales have been established;

(3) The sales prices are not less than could reasonably be expected if competitive bid sales methods were employed and the prices have been approved by a reviewing authority designated by the head of the field organization; and

(4) The warranty prescribed in § 109–45.302–50(a) of this subpart is obtained when sales are made to employees.

### § 109–45.304–6 Reviewing authority.

The reviewing authority may consist of one or more persons designated by the head of the field organization.

### § 109–45.304–50 Processing bids and awarding of contracts.

The procedures established in 48 CFR 14.4 and 48 CFR 914.4 shall be made applicable to the execution, receipt, safeguarding, opening, abstraction, and evaluation of bids and awarding contracts, except that in evaluating bids and awarding contracts, disposal under conditions most advantageous to the Government based on high bids received shall be the determining factor.

### § 109–45.304–51 Documentation.

Files pertaining to surplus property sales shall contain copies of all documents necessary to provide a complete record of the sales transactions and shall include the following as appropriate:

(a) A copy of the request/invitation for bids if a written request/invitation for bids is employed. A list of items or lots sold, indicating acquisition cost, upset price and sales price indicated.

(b) A copy of the advertising literature distributed to prospective bidders.

(c) A list of prospective bidders solicited.

(d) An abstract of bids received.

(e) Copies of bids received, including Standard Form 119, Contractor's Statement of Contingent or Other Fees, together with other relevant information.

(f) A statement concerning the basis for determination that proceeds constitute a reasonable return for property sold.

(g) When appropriate, full and adequate justification for not advertising the sale when the fair market value of property sold in this manner in any one case exceeds $1,000.

(h) A justification concerning any award made to other than the high bidder.

(i) The approval of the reviewing authority when required.

(j) A copy of the notice of award.

(k) All related correspondence.

(l) In the case of auction or spot bid sales, the following additional information should be included:

(1) A summary listing of the advertising used (*e.g.*, newspapers, radio, television, and public postings).

(2) The names of the prospective bidders who attended the sale.

(3) A copy of any pertinent contract for auctioneering services and related documents.

(4) A reference to files containing record of deposits and payments.

### § 109–45.309 Special classes of property.

### § 109–45.309–2.50 Hazardous property.

Hazardous property shall be made available for sale only after the review and certification requirements of § 109–43.307–2.50 of this subpart have been met.

### § 109–45.309–51 Export controlled property.

Export controlled property shall be made available for sale only after the export license requirements of § 109–43.307–50 of this subpart have been met.

### § 109–45.309–52 Classified property.

Classified property shall be made available for sale only after the declassification requirements of § 109–43.307–51 of this subpart have been met.

### § 109–45.309–53 Nuclear-related or proliferation sensitive property.

Nuclear-related or proliferation-sensitive property shall be made available for sale only after the stripping and certification requirements of § 109–

43.307–52 of this subpart have been met.

### § 109–45.309–54 Information Technology (IT).

IT shall be made available for sale only after the sanitizing and certification requirements of § 109–43.307–53 of this subpart have been met.

### § 109–45.310 Antitrust laws.

DOE offices shall submit to the Office of Management any request for a proposed sale of a patent, process, technique, or invention, regardless of cost; or of surplus personal property with a fair market value of $3,000,000 or more.

### § 109–45.317 Noncollusive bids and proposals.

(a) [Reserved]

(b) The head of the field organization shall make the determination required in 41 CFR 101–45.317(b). This authority cannot be redelegated.

## Subpart 109–45.9—Abandonment or Destruction of Personal Property

### § 109–45.901 Authority to abandon or destroy.

Personal property in the possession of DOE offices or designated contractors may be abandoned or destroyed provided that a written determination has been made by the OPMO/PA that property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale.

### § 109–45.902 Findings justifying abandonment or destruction.

### § 109–45.902–2 Abandonment or destruction without notice.

The head of the field organization shall designate an official to make the findings justifying abandonment or destruction without public notice of personal property. The OPMO/PA shall review and coordinate on the findings.

## Subpart 109–45.10—Recovery of Precious Metals

### § 109–45.1002 Agency responsibilities.

The Office of Management and Program Secretarial Officer (PSO) are responsible for establishing a program for the recovery of precious metals.

### § 109–45.1002–3 Precious metals recovery program monitor.

The Office of Management shall be the precious metals recovery program monitor.

### § 109–45.1003 Recovery of silver from precious metals bearing materials.

The Office of Management and Program Secretarial Officer (PSO) are responsible for the establishment and maintenance of a program for silver recovery from used hypo solution and scrap film.

### § 109–45.1004 Recovery and use of precious metals through the DOD Precious Metals Recovery Program.

DOE operates its own precious metals pool and therefore does not participate in the DOD Precious Metals Recovery Program. See § 109–27.5106 of this chapter for guidance on operation of the DOE precious metals pool.

## Subpart 109–45.47—Reports

### § 109–45.4702 Negotiated sales reports.

The report of negotiated sales shall be submitted by DOE offices to GSA, in accordance with 41 CFR 102–38.

## Subpart 109–45.50—Excess and Surplus Radioactively and Chemically Contaminated Personal Property

### § 109–45.5005 Disposal.

### § 109–45.5005–1 General.

(a) Nuclear-related, proliferation-sensitive, low level contaminated property, and classified personal property shall not be transferred, sold, exchanged, leased, donated, abandoned, or destroyed without approval of the cognizant program office. Disposal of this personal property is subject to the restrictions contained in applicable sections of part 109–42 and §§ 109–43.307–50, 109–43.307–51, and 109–43.307–52 of this chapter, and applicable sections of 41 CFR part 101–42.

(b) Personal property that is considered defective or unsafe must be mutilated prior to shipment for disposal.

## Subpart 109–45.51—Disposal of Excess and Surplus Personal Property in Foreign Areas

### § 109–45.5100 Scope of subpart.

This subpart sets forth policies and procedures governing the disposal of DOE-owned foreign excess and surplus personal property.

### § 109–45.5101 Authority.

The policies and procedures contained in this subpart are issued pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, former 40 U.S.C. *et seq.*, as amended. Title IV of the Act entitled "Foreign Excess Property" provides that, except where commitments exist under previous agreements, all excess personal property located in foreign areas shall be disposed of by the owning agency, and directs that the head of the agency conform to the foreign policy of the United States in making such disposals in accordance 41 CFR 102–36.

### § 109–45.5102 General.

Disposal of Government-owned personal property in the custody of DOE organizations or its contractors in foreign areas shall be made in an efficient and economical manner, and in conformance with the foreign policy of the United States.

### § 109–45.5103 Definitions.

As used in this subpart, the following definitions apply:

*Foreign* means outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

*Foreign service post* means the local diplomatic or consular post in the area where the excess personal property is located.

### § 109–45.5104 Disposal.

### § 109–45.5104–1 General.

Foreign excess personal property which is not required for transfer within DOE or to other U.S. Government agencies, except for the personal property identified in § 109–45.5005–1(a) of this part, shall be considered surplus and may be disposed of by transfer, sale, exchange, or lease, for cash, credit, or other property and upon such other terms and conditions as may be deemed proper. Such personal property may also be donated, abandoned, or destroyed under the conditions specified in § 109–45.5105–2 of this subpart. Most foreign governments have indicated to the U.S. State Department that they wish to be consulted before U.S. Government property is disposed of in their countries (except in the case of transfers to other U.S. Government agencies). Matters concerning customs duties and taxes, or similar charges, may require prior agreement with the foreign government involved. The State Department shall be contacted in regard to these issues. Whenever advice or approval of the State Department is required by this subpart, it may be obtained either through the foreign service post in the foreign area involved or from the State Department in Washington, DC. If the issue is to be presented to the State Department in Washington, DC, it shall be referred through appropriate administrative channels to the Office of International

Affairs for review, coordination, and handling.

### § 109–45.5104–2 Methods of disposal.

(a) Sales of foreign surplus personal property shall be conducted in accordance with the following guidelines:

(1) Generally, all sales of foreign surplus personal property shall be conducted under the competitive bid process unless it is advantageous and more practicable to the Government not to do so. When competitive bids are not solicited, reasonable inquiry of prospective purchasers shall be made in order that sales may be made on terms most advantageous to the U.S. Government.

(2) In no event shall any personal property be sold in foreign areas without a condition which states that its importation into the United States is forbidden unless the U.S. Secretary of Agriculture (in the case of any agricultural commodity, food, cotton, or woolen goods), or the U.S. Secretary of Commerce (in the case of any other property), has determined that the importation of such property would relieve domestic shortages or otherwise be beneficial to the economy of the United States.

(3) Sales documents shall provide that the purchaser must pay any import duties or taxes levied against personal property sold in the country involved and further provide that the amount of this duty or tax shall not be included as a part of the price paid the U.S. Government for the personal property. In the event the levy is placed upon the seller by law, the buyer will be required to pay all such duties or taxes and furnish the seller copies of his receipts prior to the release of the personal property to him. However, if the foreign government involved will not accept payment from the buyer, the seller will collect the duties or taxes and turn the amounts collected over to the foreign government. Accounting for the amounts collected shall be coordinated with the disbursing officer of the nearest United States foreign service post. The property shall not be released to the purchaser until the disposal officer is satisfied that there is no responsibility for payment by the United States (as contrasted to collection by the United States) of taxes, duties, excises, etc.

(4) Advance approval must be obtained from the State Department for the sale of certain categories of personal property, including small arms and machine guns; artillery and projectiles; ammunition, bombs, torpedoes, rockets and guided missiles; fire control equipment and range finders; tanks and ordnance vehicles; chemical and biological agents, propellants and explosives; vessels of war and special naval equipment; aircraft and all components, parts and accessories for aircraft; military electronic equipment; aerial cameras, military photo-interpretation, stereoscopic plotting and photogrammetry equipment; and all material not enumerated which is included in the United States Munitions List, 22 CFR 121.01, and is subject to disposal restrictions. Therefore, prior to the sale of any of the articles enumerated in the U.S. Munitions List, the foreign service post in the area shall be consulted.

(5) All proposed sales, regardless of the total acquisition cost of personal property involved, which the head of the DOE foreign office believes might have a significant economic or political impact in a particular area, shall be discussed with the foreign service post.

(b) While there is authority for exchange or lease of foreign surplus personal property, such authority shall be exercised only when such action is clearly in the best interests of the U.S. Government. Disposals by exchange are subject to the same requirements as disposals by sale under § 109–45.5105–2 of this subpart.

(c)(1) Foreign excess or surplus personal property (including salvage and scrap) may be donated, abandoned, or destroyed provided:

(i) The property has no commercial value or the estimated cost of its care and handling would exceed the estimated proceeds from its sale; and

(ii) A written finding to that effect is made and approved by the Office of International Affairs.

(2) No personal property shall be abandoned or destroyed if donation is feasible. Donations under these conditions may be made to any agency of the U.S. Government, or to educational, public health, or charitable nonprofit organizations.

(3) Foreign excess personal property may also be abandoned or destroyed when such action is required by military necessity, safety, or considerations of health or security. A written statement explaining the basis for disposal by these means and approval by the Office of International Affairs.

(4) Property shall not be abandoned or destroyed in a manner which is detrimental or dangerous to public health and safety, or which will cause infringement on the rights of other persons.

### § 109–45.5105 Reports.

(a) Proposed sales of foreign surplus personal property shall include all pertinent data, including the following:

(1) The description of personal property to be sold, including:

(i) Identification of personal property (description should be in terms understandable to persons not expert in technical nomenclature). Personal property covered by the U.S. Munitions List and regulations pertaining thereto (as published in 22 CFR 121.1) should be clearly identified;

(ii) Quantity;

(iii) Condition; and

(iv) Acquisition cost.

(2) The proposed method of sale (*e.g.,* sealed bid, negotiated sale, etc.)

(3) Any currency to be received and payment provisions (*i.e.,* U.S. dollars, foreign currency, or credit, including terms of the proposed sale).

(4) Any restrictions on use of personal property to be sold (such as resale of property, disposal as scrap, demilitarization, etc.).

(5) Any special terms or conditions of sale.

(6) The categories of prospective purchasers (*e.g.,* host country, other foreign countries, special qualifications, etc.).

(7) How taxes, excises, duties, etc., will be handled.

## PART 109–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

Sec.
109–46.000 Scope of part.
109–46.000–50 Applicability.

### Subpart 109–46.2—Authorization

109–46.202 Restrictions and limitations.
109–46.203 Special authorizations.

**Authority:** Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

### § 109–46.000 Scope of part.

### § 109–46.000–50 Applicability.

(a) Except as set forth in paragraphs (a)(1) through (5) of this section, the requirements of FPMR/FMR part 101–46 and this part are not applicable to designated contractors. Designated contractors shall comply with the following FPMR/FMR requirements:

(1) 101–46.200;

(2) 101–46.201–1;

(3) 101–46.202(b)(2), (3), (4), (5), (6), and (7);

(4) 101–46.202(c)(1), (2), (4), (5), (6), (7), (10), (11), and (12);

(5) 101–46.202(d).

(b) Items in the following Federal Supply Classification Groups (FSCG) are not eligible for processing under the exchange/sale provision. Requests for waivers must be processed through the DPMO to GSA.

| FSCG | Description |
|---|---|
| 10 | Weapons |
| 11 | Nuclear ordnance |
| 12 | Fire control equipment |
| 14 | Guided missiles |
| 15 | Aircraft and airframe structural components (except FSC Class 1560, Airframe structural components) |
| 20 | Ship and marine equipment |
| 22 | Railway equipment |
| 41 | Firefighting, rescue, and safety equipment |

### Subpart 109–46.2—Authorization

#### § 109–46.202 Restrictions and limitations.

(a)–(c)(9) [Reserved]

(10) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate an official to make the certification that a continuing valid requirement exists for excess personal property acquired and placed in official use for less than one year but no longer required and is to be disposed of under the exchange/sale provisions.

(11) [Reserved]

(12) Program Secretarial Officer (PSO) shall make the determination concerning demilitarization of combat material.

#### § 109–46.203 Special authorizations.

(a) [Reserved]

(b) The Office of Management and Program Secretarial Officer (PSO) for their respective organizations shall designate an official to make the certification concerning the exchange of historic items for historical preservation or display.

## PART 109–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PERSONAL PROPERTY

Sec.
109–48.000 Scope of part.
109–48.000–50 Applicability.

Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

109–48.101 Forfeited or voluntarily abandoned property.
109–48.101–6 Transfer to other Federal agencies.

**Authority:** 40 U.S.C. 121.

#### § 109–48.000 Scope of part.

#### § 109–48.000–50 Applicability.

This part is applicable to contractor operations where the abandoned or forfeited personal property is found on premises owned or leased by the Government that are managed and operated by designated contractors.

### Subpart 109–48.1—Utilization of Abandoned and Forfeited Personal Property

#### § 109–48.101 Forfeited or voluntarily abandoned property.

#### § 109–48.101–6 Transfer to other Federal agencies.

(a)–(c) [Reserved]

(d) Transfer orders for forfeited or voluntarily abandoned distilled spirits, wine, and malt beverages for medicinal, scientific, or mechanical purposes or any other official purposes for which appropriated funds may be expended by a Government agency shall be forwarded through normal administrative channels for signature by the DPMO and for subsequent forwarding to GSA for release.

(e) [Reserved]

(f) Transfer orders for reportable forfeited drug paraphernalia shall be forwarded through normal administrative channels for signature by the Property Executive and for subsequent forwarding to GSA for approval.

## PART 109–50—SPECIAL DOE DISPOSAL AUTHORITIES

Sec.
109–50.000 Scope of part.
109–50.001 Applicability.

Subpart 109–50.1—Laboratory Equipment Donation Program Grant Program

109–50.100 Scope of subpart.
109–50.101 Applicability.
109–50.102 General.
109–50.103 Definitions.
109–50.104 Equipment which may be granted.
109–50.105 Equipment which may not be granted.
109–50.106 Procedure.
109–50.107 Reporting.

Subpart 109–50.2—Math and Science Equipment Gift Program

109–50.200 Scope of subpart.
109–50.201 Applicability.
109–50.202 Definitions.
109–50.203 Eligible equipment.
109–50.204 Limitations.
109–50.205 Procedure.
109–50.206 Reporting.

Subpart 109–50.3—[Reserved]

Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

109–50.400 Scope of subpart.
109–50.401 Definitions.
109–50.402 Submission of proposals.
109–50.403 Need to establish DOE program benefit.

Subpart 109–50.48—Exhibits

109–50.4800 Scope of subpart.
109–50.4801 Equipment Gift Agreement.

**Authority:** Sec. 644, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254); sec. 31, Atomic Energy Act, as amended; Energy Reorganization Act of 1974, secs. 103 and 107; Title III, Department of Energy Organization Act; E.O. 12999; sec. 3710(i), Stevenson-Wydler Technology Innovation Act, as amended (15 U.S.C. 3710(i)); Pub. L. 101–510, Department of Energy Science Education Enhancement Act; Pub. L. 102–245, American Technologies Preeminence Act of 1991 (15 U.S.C. 3701); Office of Science Financial Assistance Program (10 CFR part 605).

#### § 109–50.000 Scope of part.

This part provides guidance on the policies, practices, and procedures for the disposal of DOE property under special legislative authorities.

#### § 109–50.001 Applicability.

The provisions of this part apply to direct DOE operations and to designated contractors only when specifically provided for in the appropriate subpart.

### Subpart 109–50.1—Laboratory Equipment Donation Program Grant Program

#### § 109–50.100 Scope of subpart.

This subpart provides guidance on the granting of Laboratory Equipment Donation Program in the LEDP is limited to accredited, post graduate, degree granting institutions including universities, colleges, junior colleges, technical institutes, museums, or hospitals, located in the U.S. and interested in establishing or upgrading energy-oriented educational programs in the life, physical, and environmental sciences and in engineering is eligible to apply. An energy-oriented program is defined as an academic research activity dealing primarily or entirely in energy-related topics.

#### § 109–50.101 Applicability.

This subpart is applicable to DOE offices and designated contractors.

#### § 109–50.102 General.

DOE, to encourage research and development in the field of energy, awards grants of excess Laboratory Equipment Donation Program to eligible institutions for use in energy-oriented educational programs. Under the Used Laboratory Equipment Donation Program (LEDP) Grant Program, grants of used energy-related equipment excess to the requirements of DOE offices and designated contractors may be made to eligible institutions prior to reporting the equipment to GSA for reutilization screening.

### § 109–50.103 Definitions.

As used in this subpart the following definitions apply: *Book value* means acquisition cost less depreciation. *DOE Financial Assistance Rules* (10 CFR part 600) means the DOE regulation which establishes a uniform administrative system for application, award, and administration of assistance awards, including grants and cooperative agreements.

*Eligible institution* means any nonprofit educational institution of higher learning, such as universities, colleges, junior colleges, hospitals, and technical institutes or museums located in the United States and interested in establishing or upgrading energy-oriented education programs.

*Energy-oriented education program* means one that deals partially or entirely in energy or energy-related topics.

### § 109–50.104 Equipment which may be granted.

Generally, equipment items classified in FSCG 66, Instruments and Laboratory Equipment, are eligible for granting under this program. Other selected items designated by the Office of Workforce Development for Teachers and Scientists (WDTS) and approved by the OPMO, are made available under the program.

### § 109–50.105 Equipment which may not be granted.

Equipment which will not be granted include:

(a) Equipment intended by the DOE institution for use in contractual research projects.

(b) Furniture, such as desks, tables, chairs, typewriters, etc. (exception is such equipment that may be an essential component of and physically attached to an energy-related laboratory equipment system);

(c) General supplies.

### § 109–50.106 Procedure.

(a) After DOE utilization screening through EADS, items eligible for LEDP grants are extracted from the EADS system and Office of Workforce Development for Teachers and Scientists (WDTS).

(b) Office of Workforce Development for Teachers and Scientists (WDTS) to prospective grantees through an automated system.

(c) The following periods have been established during which time equipment will remain available to this program prior to reporting it to GSA for reutilization by other Federal agencies:

(1) Thirty days from the date DOE utilization screening is completed to permit suitable time for eligible institutions to review and earmark the desired equipment.

(2) An additional thirty days after the equipment is earmarked to permit the eligible institutions to prepare and submit an equipment proposal request and to provide time for field organizations to review and evaluate the proposal and take appropriate action.

(d) Upon approval of the proposal, a grant will be issued to the institution upon completion.

(e) A copy of the completed grant, shall be used to transfer title and drop accountability of the granted equipment from the financial records.

(f) The cost of care and handling of personal property incident to the grant shall be charged to the receiving institution. Such costs may consist of packing, crating, shipping and insurance, and are limited to actual costs. In addition, where appropriate, the cost of any repair and/or modification to any equipment shall be borne by the recipient institution.

### § 109–50.107 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and 109–43.4701(c).

(b) A copy of each equipment agreement shall be forwarded to the Director, Office of Laboratory Policy and Infrastructure Management.

## Subpart 109–50.2—Math and Science Equipment Gift Program

### § 109–50.200 Scope of subpart.

This subpart provides guidance on providing gifts of excess and/or surplus education related and Federal research equipment to elementary and secondary educational institutions or nonprofit organizations for the purpose of improving math and science curricula or conducting of technical and scientific education and research activities.

### § 109–50.201 Applicability.

The provisions of this subpart are applicable to DOE offices and designated contractors.

### § 109–50.202 Definitions.

As used in this subpart the following definitions apply:

*DOE Field Organizations* means the DOE Federal management activities, including Operations Offices, Field Offices, Area Offices, Site Offices, Energy Technology Centers, and Project Offices staffed by Federal employees.

*Education-related and Federal research equipment* includes but is not limited to DOE-owned property in FSCG 34, 36, 41, 52, 60, 61, 66, 67, 70, and 74 (See 41 CFR 101–43.4801(d)), and other related equipment, which is deemed appropriate for use in improving math and science curricula or activities for elementary and secondary school education, or for the conduct of technical and scientific education and research activities.

*Eligible recipient* means local elementary and secondary schools and nonprofit organizations.

*Elementary and secondary schools* means individual public or private educational institutions encompassing kindergarten through twelfth grade, as well as public school districts.

*Facilities under DOE Field Organization cognizance* means national laboratories, production plants, and project sites managed and operated by DOE contractors or subcontractors.

### § 109–50.203 Eligible equipment.

(a) Education-related and research equipment will include, but is not limited to the following FSCGs:

**FSCG and Description**

| | |
|---|---|
| 34 | Metalworking Machinery |
| 36 | Special Industry Machinery |
| 41 | Refrigeration, Air Conditioning and Air Circulating Equipment |
| 52 | Measuring Tools |
| 60 | Fiber Optics Materials, Components, Assemblies and Accessories |
| 61 | Electric Wire, and Power and Distribution Equipment |
| 66 | Instruments and Laboratory Equipment |
| 67 | Photographic Equipment |
| 70 | General Purpose Automatic Data Processing Equipment (Including Firmware), Software, Supplies and Support Equipment |
| 74 | Office Machines, Text Processing Systems and Visible Record Equipment |

(b) Other related equipment may be provided if deemed appropriate and approved by the Director, Office of Laboratory Policy and Infrastructure Management.

### § 109–50.204 Limitations.

(a) Excess and/or surplus education-related and Federal research equipment at DOE Field Organizations and cognizant facilities is eligible for transfer as a gift under this program. However, safety, environmental, and health matters must be considered.

(b) Title to the equipment will transfer upon the recipient's written acknowledgement of receipt.

(c) The Office of Workforce Development for Teachers and Scientists (WDTS) may authorize gifts of excess and/or surplus education-related and Federal research equipment by signature on the appropriate gift instrument where the book value of an item of equipment exceeds $25,000 or the cumulative book value of the gifts under this program to any one institution exceeds $25,000. HCA or designee may authorize gifts of excess and/or surplus education-related and Federal research equipment of lesser individual and cumulative book value by signature on the appropriate gift instrument. Delegations by the HCA to authorize gifts of excess and/or surplus education-related and Federal research equipment shall be in writing to a specific individual, for a specified period of time, and for a specified (or unlimited) level of authority.

(d) Gifts shall be serviceable and in working order. Disposal Condition Codes 1 and 4, as defined in 41 CFR 101–43.4801(e), meet this criteria. Serviceability of equipment should be verified before the gift is made to the eligible recipient.

### § 109–50.205 Procedure.

(a) The DOE facility will set aside an appropriate amount of excess and/or surplus education-related and Federal research equipment for transfer under this program.

(b) A list of available education-related and Federal research equipment will be prepared and distributed to eligible recipients and the chief State School Board Officer.

(c) Precollege institutions with partnership arrangements with the DOE or its facilities (*e.g.*, an adopted school) may receive gifts of equipment in support of the partnership.

(d) Precollege institutions not in a partnership with DOE may receive equipment at the recommendation of the chief State School Board Officer. The Chief State School Board Officer will determine which schools within the state will receive which equipment. Consideration for placement of the equipment should be based on:

(1) The elementary or secondary schools determined to have the greatest need; or

(2) Recipients of federally funded math and science projects where the equipment would further enhance the progress of the project.

(e) Eligible recipients will have 30 days to select and freeze, on a first come, first serve basis, the items desired and submit a request for selected items stating:

(1) Why the gift is needed; and

(2) How the gift will be used to improve math and science curricula or in the conduct of technical and scientific education and research activities.

(f) The cost of shipping should be minimal and not more than the actual equipment value.

(g) An Equipment Gift Agreement will be prepared and used to provide the gift to eligible recipients. The gift agreement will be in the format provided in section 109–50.4801 of this subchapter. The agreement shall be numbered for control purposes, and signed by the Office of Science's Office of Workforce Development for Teachers and Scientists (WDTS) or the HCA or designee, as appropriate, and an appropriate official representing the eligible recipient.

### § 109–50.206 Reporting.

(a) Gifts made under this program shall be included in the annual report of property transferred to non-Federal recipients, as required by 41 CFR 101–43.4701(c) and § 109–43.4701(c) of this chapter.

(b) A copy of each equipment agreement shall be forwarded to the Office of Workforce Development for Teachers and Scientists (WDTS).

## Subpart 109–50.3—[Reserved]

## Subpart 109–50.4—Programmatic Disposal to Contractors of DOE Property in a Mixed Facility

### § 109–50.400 Scope of subpart.

This subpart contains policy to be followed when it is proposed to sell or otherwise transfer DOE personal property located in a mixed facility to the contractor who is the operator of that facility.

### § 109–50.401 Definitions.

As used in this subpart, the following definitions apply;

*Contractor* means the operator of the mixed facility.

*DOE property* means DOE-owned personal property located in a mixed facility.

*Mixed facility* means a partly DOE-owned and partly contractor-owned facility. For purposes of this subpart, however, this definition does not apply to such a facility operated by an educational or other nonprofit institution under a basic research contract with DOE.

### § 109–50.402 Submission of proposals.

Proposals involving programmatic disposals of DOE personal property located in mixed facilities to contractors operating that facility shall be forwarded through the appropriate program organization to the Property Executive, for review and processing for approval. Each such request shall include all information necessary for a proper evaluation of the proposal. The proposal shall include, as a minimum:

(a) The purpose of the mixed facility;

(b) The description, condition, acquisition cost, and present use of the DOE personal property involved.

(c) The programmatic benefits which could accrue to DOE from the disposal to the contractor (including the considerations which become important if the disposal is not made);

(d) The appraised value of the DOE personal property (preferably by independent appraisers); and

(e) The proposed terms and conditions of disposal including:

(1) Price;

(2) Priority to be given work for DOE requiring the use of the transferred property, and including the basis for any proposed charge to DOE for amortizing the cost of plant and equipment items;

(3) Recapture of the property if DOE foresees a possible future urgent need; and

(4) Delivery of the property, whether "as is-where is," etc.

### § 109–50.403 Need to establish DOE program benefit.

When approval for a proposed programmatic disposal of DOE personal property in a mixed facility is being sought, it must be established that the disposal will benefit a DOE program. For example, approval might be contingent on showing that:

(a) The entry of the contractor as a private concern into the energy program is important and significant from a programmatic standpoint; and

(b) The sale of property to the contractor will remove obstacles which otherwise discourage entry into the field.

## Subpart 109–50.48—Exhibits

### § 109–50.4800 Scope of subpart.

This subpart exhibits information referenced in the text of part 109–50 of this chapter that is not suitable for inclusion elsewhere in that part.

### § 109–50.4801 Equipment Gift Agreement.

(a) The following Equipment Gift Agreement format will be used to provide gifts of excess and/or surplus equipment to eligible recipients under the Math and Science Equipment Gift Program (see subpart 109–50.2 of this chapter).

**Equipment Gift Agreement**

(Reference Number)

**Between The U.S. Department of Energy and**

(Name of Eligible Recipient)

**I. Purpose**

The Department of Energy shall provide as a gift, excess and/or surplus education-related and Federal research equipment to (Name of Eligible Recipient), hereafter referred to as the Recipient, for the purpose of improving the Recipient's math and science education curricula or for the Recipient's conduct of technical and scientific education and research activities.

**II. Authority**

Federal agencies have been directed, to the maximum extent permitted by law, to give highest preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment, at the lowest cost permitted by law. Furthermore, subsection 11(i) of the Stevenson Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710 (i)), authorizes the Director of a laboratory, or the head of any Federal agency or department to give excess research equipment to an educational institution or nonprofit organization for the conduct of technical and scientific education and research activities.

**III. Agreement**

A. The Department of Energy agrees to provide the equipment identified in the attached equipment gift list, as a gift for the purpose of improving the Recipient's math and science curricula or for the Recipient's conduct of technical and scientific education and research activities.

B. Title to the education-related and Federal research equipment, provided as a gift under this agreement, shall vest with the Recipient upon the Recipient's written acknowledgement of receipt of the equipment. The acknowledgement shall be provided to (Name of the DOE signatory) at (address).

C. The Recipient will be responsible for any repair and modification costs to any equipment received under this gift.

D. The Recipient hereby releases and agrees to hold the Government, the Department of Energy, or any person acting on behalf of the Department of Energy harmless, to the extent allowable by State law, for any and all liability of every kind and nature whatsoever resulting from the receipt, shipping, installation, operation, handling, use, and maintenance of the education-related and Federal Research equipment provided as a gift under this agreement.

E. The Recipient agrees to use the gift provided herein for the primary purpose of improving the math and science curricula or for the conduct of technical and scientific education and research activities.

F. The Recipient agrees to provide for the return of the equipment if such equipment, while still usable, has not been placed in use for its intended purpose within one year after receipt from the Department of Energy.

(U.S. Department of Energy Office)

(Name and Address of Recipient)

(Signature of HCA or Designee)

(Signature of Official)

(Typed Name)

(Typed Name)

(Typed Title)

(Typed Title)

(Date)

(Date)

(b) The list of gifts that accompanies the Equipment Gift Agreement shall contain the Gift Agreement reference number, name of the eligible recipient, and the name of the DOE office. In addition, the following information shall be provided for each line item provided as a gift: DOE ID number, description (name, manufacturer, model number, serial number, etc.), FSC code, quantity, location, acquisition date, and acquisition cost.

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## Part III

## Pension Benefit Guaranty Corporation

Privacy Act of 1974; Systems of Records; Notices

## PENSION BENEFIT GUARANTY CORPORATION

## Privacy Act of 1974; Systems of Records

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of various technical and clarifying changes to existing systems of records, publication of an additional general routine use, publication of an additional routine use for two existing systems of records, deletion of a routine use, and the publication of a new system of records.

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**SUMMARY:** Pursuant to the Privacy Act of 1974 the Pension Benefit Guaranty Corporation (PBGC) is proposing to add an additional general routine use, add an additional routine use to PBGC–3, Employee Payroll, Leave, and Attendance Records, add an additional routine use to PBGC–19, Office of General Counsel Case Management System, delete a routine use from PBGC–22, Telework and Alternative Worksite Records, establish a new system of records, PBGC–24, Participant Debt Collection, and make various technical and clarifying changes to eighteen existing systems of records.

**DATES:** Comments must be received on or before October 14, 2016. The revised systems of records described herein will become effective October 31, 2016, without further notice, unless comments result in a contrary determination and a notice is published to that effect.

**ADDRESSES:** You may submit written comments to PBGC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040).

**FOR FURTHER INFORMATION CONTACT:** Caitlin Trujillo, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW., Washington, DC 20005, 202–326–4400, extension 6281, or Sarah Smith, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW., Washington, DC 20005, 202–326–4400, extension 3171. For access to any of PBGC's systems of records, contact Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, at the above address, 202–326–4040.

**SUPPLEMENTARY INFORMATION:**

### (1) PBGC Is Proposing To Add an Additional Routine Use to Its Prefatory Statement of General Routine Uses

PBGC is proposing to add an additional routine use to its Prefatory Statement of General Routine Uses. PBGC recently received correspondence from the Office of Management and Budget (OMB) requesting that all agencies add an additional routine use to their system of records notices which allows them to provide information in their system of records to other federal agencies that may reasonably be needed to respond to a suspected or confirmed breach. This proposed routine use reflects the expanded scope of harms resulting from a breach and allows the government to more effectively respond to suspected or confirmed breaches.

General Routine Use 14 will read: "Disclosure to Another Federal Agency or Federal Entity. To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security."

### (2) PBGC Is Proposing To Add an Additional Routine Use to PBGC–3, Employee Payroll, Leave, and Attendance Records

PBGC's review of its system of records notices revealed that PBGC occasionally receives data calls from the Office of Personnel Management (OPM) requesting records from PBGC–3. In order to permit PBGC to provide the relevant records to OPM, PBGC is proposing to add a new routine use to PBGC–3.

Routine Use 4 will read: "Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for the evaluation and oversight of Federal personnel management."

### (3) PBGC Is Proposing To Add an Additional Routine Use to PBGC–19, Office of General Counsel Case Management System

PBGC is proposing to add an additional routine use to PBGC–19. PBGC recently received correspondence from the Office of Government Information Services (OGIS) requesting that PBGC add an OGIS routine use to its Freedom of Information Act (FOIA)/Privacy Act (PA) system of records notice. PBGC uses FOIAonline (*https://foiaonline.regulations.gov/*) to process all of its FOIA and PA requests. FOIAonline is an Environmental Protection Agency (EPA) system and is covered by EPA–9. Therefore, PBGC does not have its own system of records dedicated solely to FOIA and PA records. PBGC does however, store and maintain its FOIA and PA administrative appeals and responses in PBGC–19. Accordingly, PBGC proposes to add an additional routine use to PBGC–19, which will enable OGIS to more effectively carry out its statutory mission and will also provide requesters with easier access to the dispute resolution process.

Routine Use 10 will read: "A record from this system of records may be disclosed to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies."

### (4) PBGC Is Proposing To Remove a Routine Use From PBGC–22, Telework and Alternative Worksite Records

In the process of reviewing its system of records notices, PBGC determined that Routine Use 2 in PBGC–22 is unnecessary. Routine 2 use states: "A record from this system may be disclosed to medical professionals to obtain information about an employee's medical background necessary to grant or deny approval of medical telework." However, this system of records does not contain records pertaining to medical telework. Medical telework records are only contained in PBGC–21 and therefore, the routine use is unnecessary.

### (5) PBGC Is Proposing To Establish a New System of Records, PBGC–24, Participant Debt Collection

In the process of reviewing its system of records notices, PBGC determined that two systems at PBGC perform debt collection activities. PBGC determined that it was necessary to publish an additional system of records notice to describe the participant debt collection activities performed by PBGC's Office of Benefits Administration in addition to PBGC's current debt collection system of records, PBGC–13, which covers the debt collection activities performed by PBGC's Financial Operations Department.

### (6) PBGC Is Proposing Various Technical and Clarifying Changes to Eighteen Existing Systems of Records

In the process of reviewing its system of records notices, PBGC determined it was necessary to make various technical and clarifying changes to all eighteen of its existing systems of records notices. These amendments, which are non-substantive, will make the systems of records notices more accurate and easier to understand, individually, and when read together.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written comments on the proposal of these systems of records. A report on the proposed systems has been sent to Congress and the Office of Management and Budget for their evaluation.

For the convenience of the public, PBGC's Prefatory Statement of General Routine Uses, the amended systems of records, and the new system of records are published in full below with changes italicized.

Issued in Washington, DC this 17th day of August, 2016.

**W. Thomas Reeder,**

*Director, Pension Benefit Guaranty Corporation.*

### Prefatory Statement of General Routine Uses

The following routine uses are incorporated by reference into various systems of records, as set forth below.

G1. Routine Use—Law Enforcement: In the event that a system of records maintained by PBGC to carry out its functions indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be disclosed to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

G2. Routine Use—Disclosure When Requesting Information: A record from this system of records may be disclosed to a federal, state, or local agency or to another public or private source maintaining civil, criminal, or other relevant enforcement information or other pertinent information if, and to the extent necessary, to obtain information relevant to a PBGC decision concerning the hiring or retention of an employee, the retention of a security clearance, or the letting of a contract.

G3. Routine Use—Disclosure of Existence of Record Information: With the approval of the Director, Human Resources Department (or his or her designee), the fact that this system of records includes information relevant to a Federal agency's decision in connection with the hiring or retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit may be disclosed to that federal agency.

G4. Routine Use—Disclosure in Litigation: A record from this system of records may be disclosed in a proceeding before a court or other adjudicative body in which PBGC, an employee of PBGC in his or her official capacity, an employee of PBGC in his or her individual capacity *whom* PBGC (or the Department of Justice (DOJ)) has agreed to represent is a party, or the United States or any other federal agency is a party and PBGC determines that it has an interest in the proceeding, *and* if PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which PBGC collected the information.

G5. Routine Use—Disclosure to *DOJ* in Litigation: When PBGC, an employee of PBGC in his or her official capacity, or an employee of PBGC in his or her individual capacity whom PBGC *(or DOJ)* has agreed to represent is a party to a proceeding before a court or other adjudicative body, or the United States or any other federal agency is a party and PBGC determines that it has an interest in the proceeding, a record from this system of records may be disclosed to DOJ if PBGC is consulting with DOJ regarding the proceeding or has decided that DOJ will represent PBGC, or its interest, in the proceeding and PBGC determines that the record is relevant to the proceeding and that the use is compatible with the purpose for which PBGC collected the information.

G6. Routine Use—*Disclosure to the Office of Management and Budget* (OMB*):* A record from this system of records may be disclosed to *OMB* in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

G7. Routine Use—Congressional Inquiries: A record from this system of records may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the individual.

G8. Routine Use—Disclosure to Labor Organizations: A record from this system of records may be disclosed to an official of a labor organization recognized under 5 U.S.C. ch. 71 when necessary for the labor organization to *properly* perform its duties as the collective bargaining representative of PBGC employees in the bargaining unit.

G9. Routine Use—Disclosure in Response to a Breach: A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) PBGC suspects or has confirmed that *there has been a breach of the system of records;* (2) PBGC has determined that as a result of the suspected or confirmed *breach* there is a risk of harm to *individuals, the agency (including its information systems, programs and operations), the Federal Government, or national security;* and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with PBGC's efforts to respond to the suspected or confirmed *breach or to* prevent, minimize, or remedy such harm.

G10. Routine Use—Contractors, Experts, and Consultants: To contractors, experts, consultants, and the agents thereof, and others performing or working on a contract, service, cooperative agreement, or other assignment for PBGC when necessary to accomplish an agency function. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to PBGC employees.

G11. Routine Use—Records Management: To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

G12. Routine Use—Gathering Information: To any source from which information is requested in the course of processing a grievance, investigation, arbitration, or other litigation, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

G13. Routine Use—Disclosure to a Federal Agency: To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, or classifying jobs, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

*G14. Routine Use—Disclosure to Another Federal Agency or Federal Entity in Response to a Breach: To another Federal agency or Federal entity, when information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the agency (including its information systems, programs, and operations), the Federal Government, or national security.*

## PBGC–1: Congressional Correspondence

### SYSTEM NAME:

Congressional Correspondence—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have corresponded with PBGC.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence received; replies to such correspondence.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; and 5 U.S.C. 301.

### PURPOSE(S):

This system of records is maintained to catalog and respond to correspondence received from members of Congress.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G11, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained manually in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by name of the correspondent.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Communications Outreach and Legislative Affairs, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Correspondents; agency employees preparing responses to incoming correspondence or who generate original correspondence in their official capacities.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–2: Disbursements

### SYSTEM NAME:

Disbursements—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrators, plan administrator, and paying agent worksites.

Records may also be kept at an additional location as backup for Continuity of Operations.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are consultants and vendors to PBGC; PBGC employees; and any other individuals who receive payments from PBGC.

### CATEGORIES OF RECORDS IN THE SYSTEMS:

Acquisition data for the procurement of goods and services; invoices; payment vouchers; Commercial and Government Entity (CAGE) codes; Dun & Bradstreet Data Universal Numbering System (DUNS) numbers; supplier status; Web site; name; address; taxpayer identification number; bank information; Social Security number; and other information related to the disbursements of funds.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; *31 U.S.C. 6101.*

### PURPOSE(S):

This system of records is maintained for use in determining amounts to be paid and in effecting payments by the Department of the Treasury on behalf of PBGC.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G7, G9 through G12, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).
2. A record from this system of records may be transmitted to the United States Department of the Treasury to effect payments to consultants and vendors, to verify consultants' and vendors' eligibility to receive payments, *or to fulfill PBGC's requirement pursuant to the Digital Accountability and Transparency Act of 2014.*

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained by PBGC in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name, tax payer identification number; and contract number.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and are protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals and PBGC.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–3: Employee Payroll, Leave, and Attendance Records

### SYSTEM NAME:

Employee Payroll, Leave, and Attendance Records—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW.,
Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PBGC employees.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel information, including names, addresses, social security numbers, employee numbers, *dates of birth,* and notifications of personnel actions; payroll information, including co-owner and/or beneficiary of bonds, marital status and number of dependents, child support enforcement court orders, debts owed to PBGC, garnishments, personal bank account and direct deposit information, tax information, and other deductions; salary data; fiscal year data; and time and attendance records.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

### PURPOSE(S):

This system of records is maintained to perform agency functions involving employee leave, attendance, and payments, including determinations relating to the amounts to be paid to employees, the distribution of pay according to employee directions (for allotments to financial institutions, and for other authorized purposes), tax withholdings and other authorized deductions, and for statistical purposes.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).
2. A record from this system of records may be disclosed to the United States Department of the Interior, the United States Department of Labor, and the United States Department of the Treasury to effect payments to employees.
3. Payments owed to PBGC through current and former employees may be shared with the Department of the Interior for the purposes of offsetting the employee's salary. Payments owed to PBGC through current and former employees who become delinquent in repaying the necessary funds may be shared with the Department of Treasury for the purposes of offsetting the employee's salary.
4. *Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for the evaluation and oversight of Federal personnel management.*

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; employee number; or social security number.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisor(s); subject individuals' timekeeper(s); *the Department of the Interior, Interior Business Center,* and the Office of Personnel Management.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–6: Plan Participant and Beneficiary Data

### SYSTEM NAME:

Plan Participant and Beneficiary Data—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrators, plan administrator, and paying agent worksites.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, beneficiaries in terminated and non-terminated pension plans covered by the *Employee Retirement Income Security Act of 1974* (ERISA), and other individuals who contact PBGC regarding benefits they may be owed from PBGC.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Names; addresses; telephone numbers; email addresses; sex; social security numbers and other Social Security Administration *(SSA)* information; dates of birth and death; dates of hire; salary; employment history; marital status; domestic relations orders; time of plan participation; eligibility status; pay status; benefit data, including records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; health-related information; powers of attorney; insurance information where plan benefits are provided by private insurers; pension plan names and numbers; initial and final PBGC determinations (see 29 CFR 4003.21 and 4003.59); and other records relating to debts owed to PBGC.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 26 U.S.C. 6103; 44 U.S.C. 3101; 5 U.S.C. 301.

### PURPOSE(S):

This system of records is maintained for use in determining whether participants, alternate payees, and beneficiaries are eligible for benefits under plans covered by ERISA, determining supplemental payments to be paid to those persons by a party other than PBGC, determining the amounts of benefits to be paid, making benefit payments, collecting benefit overpayments, and complying with statutory and regulatory mandates.

Names, addresses, and telephone numbers are used to survey customers to measure their satisfaction with PBGC's benefit payment services and to track (for follow-up) those who do not respond to surveys.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

General Routine Uses G1, G2, G4 through G7, G9 through G12, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

1. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, or trustees:

a. To enable these third parties to make or determine benefit payments, or

b. To report to the *Internal Revenue Service* (IRS) the amounts of benefits paid (or required to be paid) and taxes withheld.

2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.

3. A record from this system of records may be disclosed, upon request for a purpose authorized under Title IV of ERISA, to an official of a labor organization recognized as the current or former collective bargaining representative of the individual about whom a request is made.

4. Payees' names, addresses, telephone numbers, and information related to how PBGC determined that a debt was owed by such payees to PBGC may be disclosed to the Department of the Treasury or a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract issued by the federal government that binds any such contractor or employee of such contractor to the penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

5. The name and social security number of a participant employed or formerly employed as a pilot by a commercial airline may be disclosed to the Federal Aviation Administration (FAA) to obtain information relevant to the participant's eligibility or continued eligibility for disability benefits.

6. The name of a participant's pension plan, the actual or estimated amount of a participant's benefit under Title IV of ERISA, the form(s) in which the benefit is payable, and whether the participant is currently receiving benefit payments under the plan or (if not) the earliest date(s) such payments could commence may be disclosed to the participant's spouse, former spouse, child, or other dependent solely to obtain a qualified domestic relations order under 29 U.S.C. 1056(d) and 26 U.S.C. 414(p). PBGC will disclose the information only upon the receipt of a written request by a prospective alternate payee, or the payee's representative, that describes the requester's relationship to the participant and states that the information will be used solely to obtain a qualified domestic relations order under state domestic relations law. PBGC will notify the participant of any information disclosed to a prospective alternate payee or their representative under this routine use.

7. Information from a participant's initial determination under 29 CFR 4003.1 (excluding the participant's address, telephone number, social security number, and any sensitive medical information) may be disclosed to an alternate payee, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how PBGC determined the benefit due the alternate payee so that the alternate payee can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51 *et seq.* PBGC may notify the participant of the information disclosed to an alternate payee or their representative under this routine use.

8. Information from an alternate payee's initial determination under 29 CFR 4003.1 (excluding the alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant, or their representative, under a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) to explain how PBGC determined the benefit due the participant so that the participant can pursue an administrative appeal of the benefit determination under 29 CFR 4003.51 *et seq.* PBGC may notify the

alternate payee of the information disclosed to a participant or their representative under this routine use.

9. Information used in calculating the benefit, or share of the benefit, of a participant or alternate payee (excluding the participant's or alternate payee's address, telephone number, social security number, and any sensitive medical information) may be disclosed to a participant or an alternate payee, or their representative, when (a) a qualified domestic relations order issued pursuant to 29 U.S.C. 1056(d) and 26 U.S.C. 414(p) affects the calculation of the benefit, or share of the benefit, of the participant or alternate payee; and (b) the information is needed to explain to the participant or alternate payee how PBGC calculated the benefit, or share of the benefit, of the participant or alternate payee. PBGC may notify the participant or the alternate payee, or their representative, as appropriate, of the information disclosed to the participant or the alternate payee, or their representative, under this routine use.

10. The names, addresses, social security numbers, dates of birth, and the pension plan name and number of eligible PBGC pension recipients may be disclosed to the Department of the Treasury and the Department of Labor to implement the income tax credit for health insurance costs under 26 U.S.C. 35 and the program for advance payment of the tax credit under 26 U.S.C. 7527.

11. Names, addresses, social security numbers, and dates of birth of eligible PBGC pension recipients residing in a particular state may be disclosed to the state's workforce agency if the agency received a National *Dislocated Worker* Grant from the Department of Labor under the Workforce *Innovation and Opportunity* Act of *2014* to provide assistance and support services for state residents under 29 U.S.C. *ch. 32.*

12. Payees' names, social security numbers, and dates of birth may be provided to the Department of the Treasury's Bureau of the Public Debt, the *SSA,* and the *IRS* to verify payees' eligibility to receive payments.

13. Names and social security numbers of participants and beneficiaries may be provided to the Department of the Treasury, the Department of the Treasury's financial agent, and the Federal Reserve Bank for the purpose of learning which of PBGC's check payees have electronic debit card accounts used for the electronic deposit of federal benefit payments, for establishing electronic debit card accounts for eligible participants and beneficiaries, and for administering payments to participants and beneficiaries who have selected this method of payment.

14. Information relating to revocation of a power of attorney may be disclosed to the former agent that was named in the revoked power of attorney.

15. The name and date of birth of a participant's beneficiary may be provided to that participant upon request by that participant.

16. Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to private firms and agencies that provide locator services (including credit reporting agencies and debt collection firms or agencies) to locate participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual, if mail sent to the individual at the last known address is returned as undeliverable, *or if PBGC has been otherwise unsuccessful at contacting the individual.* Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.

17. Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, *microfiche,* and discs. Records are also maintained on PBGC's network back-up tapes.

#### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; social security number; customer identification number; date of birth; or date of death.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper and electronic records that contain federal tax information are stored under procedures that meet IRS safeguarding standards.

Other paper and microfiche records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours. Electronic records that do not contain federal tax information are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

#### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. *Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.*

#### SYSTEM MANAGER(S) AND ADDRESS:

*Chief of Benefits Administration, Office of* Benefits Administration, PBGC, 1200 K Street NW., Washington, DC 20005.

#### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Plan administrators; participants, alternate payees, beneficiaries, and other individuals who contact PBGC regarding benefits they may be owed from PBGC; agents listed on power of attorneys; *agents listed on release forms,* field benefit administrators*;* the SSA; the FAA; and the IRS.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–8: Employee Relations Files

SYSTEM NAME:

Employee Relations Files—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PBGC employees who have initiated grievances under an administrative grievance procedure or under an applicable collective bargaining agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Administrative and union grievances submitted by PBGC employees; agency responses to employees' grievances; employees' appeals of responses to grievances; agency responses to such appeals; investigative notes; records of proceedings; appeal decisions; last chance, last rights, and settlement agreements, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301*; 5 U.S.C.7101; 42 U.S.C. 2000e et seq.*

PURPOSE(S):

The purpose of this system is to catalog, investigate, and appropriately and timely respond to administrative and union grievances and appeals filed by PBGC employees pursuant to PBGC's Administrative Grievance Procedure and the Collective Bargaining Agreement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the *Office of Personnel Management,* the Merit Systems Protection Board, the Federal Labor Relations Authority, Office of Special Counsel, or the Equal Employment Opportunity Commission to carry out *their* authorized functions (under 5 U.S.C. 1103, 1204, 7105, and 42 U.S.C. 2000e–4, in that order).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders and/or in electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by employee name.

SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisor(s), representative(s), and colleagues; PBGC *Office of the* General Counsel; and other individuals with relevant information.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4) (G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

## PBGC–9: Unclaimed Pensions

### SYSTEM NAME:

Unclaimed Pensions—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005 and/or field benefit administrators, and paying agent worksites.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants, alternate payees, and beneficiaries in terminated and *non*-terminated pension plans covered by the *Employee Retirement Income Security Act of 1974* (ERISA).

### CATEGORIES OF RECORDS IN THE SYSTEM:

Names; dates of birth and death; social security numbers; addresses; email addresses; telephone numbers; *name of plan sponsor;* pension plans names; pension plan numbers; employment history; and pay status.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1321, 1322, 1322a, 1341, 1342, and 1350; 29 U.S.C. 1203; 44 U.S.C. 3101; 5 U.S.C. *301*.

### PURPOSE(S):

This system of records is maintained to locate participants, alternate payees, and beneficiaries of pension plans covered by ERISA.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, G4 through G7, G9 through G11, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Names and social security numbers of plan participants and beneficiaries may be disclosed to the Internal Revenue Service *(IRS)* to obtain current addresses from tax return information and to the Social Security Administration *(SSA)* to obtain current addresses. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

3. Names and last known addresses may be disclosed to an official of a labor organization recognized as the collective bargaining representative of participants for posting in union halls or for other means of publication to obtain current addresses of participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

4. Names, social security numbers, last known addresses, dates of birth and death, amount of benefit, pension plan name, plan EIN/PIN number, name of plan sponsor, and the city and state of the plan sponsor of plan participants and beneficiaries may be disclosed to private firms and agencies that provide locator services, including credit reporting agencies and debt collection firms or agencies, to locate participants and beneficiaries. Such information will be disclosed only if PBGC has no address for an individual, if mail sent to the individual at the last known address is returned as undeliverable *or if PBGC has been otherwise unsuccessful at contacting the individual.* Disclosure shall be made only under a contract that subjects the firm or agency providing the service and its employees to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned or destroyed at the conclusion of the locating effort.

5. Names and addresses may be disclosed to licensees of the United States Postal Service (USPS) to obtain current addresses under the USPS's National Change of Address Linkage System (NCOA). Disclosure shall be made only under a contract that binds the licensee of the Postal Service and its employees to the criminal penalties of the Privacy Act. The contract shall provide that the records disclosed by PBGC shall be used exclusively for updating addresses under NCOA and must be returned to PBGC or destroyed when the process is completed. The records will be exchanged electronically in an encrypted format.

6. Names and last known addresses may be disclosed to other participants in, and beneficiaries under, a pension plan to obtain the current addresses of individuals. Such information will be disclosed only if PBGC has no address for an individual or if mail sent to the individual at the last known address is returned as undeliverable.

7. Names and last known addresses of participants and beneficiaries, and the names and addresses of participants' former employers, may be disclosed to the public to obtain current addresses of the individuals. Such information will be disclosed to the public only if PBGC is unable to make benefit payments to the participants and beneficiaries because the address it has does not appear to be current or correct.

7. Names, social security numbers, last known addresses, dates of birth and death, employment history, and pay status of individuals covered by legal settlement agreements involving PBGC may be disclosed to entities covered by or created under those agreements.

*Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:*

*Storage:*

Records are maintained in paper and/or in electronic form, including computer databases, magnetic tapes, *microfiche,* and discs. Records are also maintained on PBGC's network back-up tapes.

*Retrievability:*

Records are retrieved by any one or more of the following: Name; social security number; customer identification number; date of birth; or date of death.

*Safeguards:*

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to unauthorized individuals.

Paper and electronic records that contain federal tax information are stored under procedures that meet IRS safeguarding standards.

Other paper and microfiche records that do not contain federal tax information are kept in file folders in areas of restricted access that are locked after office hours. Electronic records that do not contain federal tax information are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

*Retention and Disposal:*

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

*System Manager(s) and Address:*

*Director of the Participant Services Department, Office of Benefits Administration,* PBGC, 1200 K Street NW., Washington, DC 20005.

*Notification Procedure:*

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

PBGC–6; the SSA; the IRS; labor organization officials; firms or agencies providing locator services; USPS licensees; field benefit administrators; and any other individual that provides PBGC with information regarding a missing participant, beneficiary, or alternate payee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–10: Administrative Appeals Files

SYSTEM NAME:

Administrative Appeals Files—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who file administrative appeals with PBGC's Appeals Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names and personal information (such as addresses, social security numbers, sex, dates of birth, dates of hire, salary, marital status (including domestic relations orders), and medical records); employment and pension plan information (such as name of pension plan, plan number, dates of commencement of plan participation or employment, statements regarding employment, dates of termination of plan participation or retirement, benefit payment data, pay status, calculations of benefit amounts, calculations of amounts subject to recoupment and/or recovery, and workman's compensation awards); Social Security Administration (*SSA*) information, insurance claims and awards; correspondence and other information relating to appeals and initial and final PBGC determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. ch.18.; 29 CFR 4003.1(b) *and (c);* 29 CFR 4003.

PURPOSE(S):

The purpose of this system is to catalog, review, and respond to administrative appeals of: Determinations that a plan is not covered under section 4021 of the *Employee Retirement Income Security Act of 1974* (ERISA); determinations of benefit entitlements under section 4022(a) or (c) of ERISA; determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA or section 414(p) of the Internal Revenue Code; determinations of benefits payable under section 4022(b) or (c) or 4022B of ERISA; and determinations of the amount of liability under sections 4062(b)(1), 4063, or 4064 of ERISA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, and G4 through G12, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to third parties who may

be aggrieved by the decision of the Appeals Board under 29 CFR 4003.57.

3. A record from this system of records may be disclosed, upon request, to an attorney representative or a non-attorney representative who has a power of attorney for the subject individuals, under 29 CFR 4003.6.

4. A record from this system of records may be disclosed to third parties, such as banks, insurance companies, and trustees, to make benefit payments to plan participants, beneficiaries, and/or alternate payees.

5. A record from this system of records may be disclosed to third parties, such as contractors and expert witnesses, to obtain expert analysis of an issue necessary to resolve an appeal.

6. The name and social security number of a participant may be disclosed to an official of a labor organization recognized as the collective bargaining representative of the participant to obtain information relevant to the resolution of an appeal.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAIN AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Participant, beneficiary, and/or alternate payee's name; plan name; appeal number; or extension request number.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Manager of the Appeals Division, Office of the General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; the participant, beneficiary, or alternate payee; plan administrators, contributing sponsors (or other employer who maintained the plan), including any predecessor, successor, or member of the same controlled group; the labor organization recognized as the collective bargaining representative of a participant; the *SSA;* and any third party affected by the decision.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–11: Call Detail Records

### SYSTEM NAME:

Call Detail Records—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and contractor employees.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to the use of PBGC telephones and PBGC-issued portable electronic devices to place calls outside of PBGC and receive calls from outside of PBGC and records indicating the assignment of telephone extension numbers and PBGC-issued portable electronic devices to PBGC employees.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

### PURPOSE(S):

*This system of records is used for Office of the Inspector General (OIG) investigations and other special investigation requests.*

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without

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consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1, G3, G4, G5, and G7 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in electronic form, including computer databases, magnetic tapes, and discs.

#### RETRIEVABILITY:

Records are retrieved by one or more of the following: name of employee or contractor employee; telephone extension number; PBGC-issued portable electronic device number; or telephone number called.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

#### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

#### SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of Information Technology, PBGC, 1200 K Street NW., Washington, DC 20005.

#### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

#### RECORD SOURCE CATEGORIES:

Telephone and PBGC-issued portable electronic device assignment records.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

### PBGC–12: Personnel Security Investigation Records

#### SYSTEM NAME:

Personnel Security Investigation Records—PBGC.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

Records may also be kept at an additional location as backup for Continuity of Operations.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Applicants, employees, students, interns, volunteers, government contractors, experts, instructors, and consultants to Federal programs who undergo a personnel background investigation for the purpose of determining suitability for employment, contractor employee fitness, credentialing for *Homeland Security Presidential Directive 12 (*HSPD 12*),* and/or access to PBGG facilities or information technology system.

This system also includes individuals accused of or found in violation of PBGC's security rules and regulations.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name; former names; date and place of birth; home address; email address; phone numbers; employment history; residential history; education and degrees earned; citizenship; passport information; name, date and place of birth, social security number, and citizenship information for spouse or cohabitant; the name and marriage information for current and former spouse(s), names of associates and references and their contact information; names, dates and places of birth, citizenship, and addresses of relatives; names of relatives who work for the federal government; information on foreign contacts and activities; association records; information on loyalty to the United States; criminal history; mental health history; drug use; financial information; fingerprints; information from the Internal Revenue Service pertaining to income tax returns; credit reports; information pertaining to security clearances; other agency reports furnished to PBGC in connection with the background investigation process; summaries of personal and third party interviews conducted during the background investigation; results of suitability decisions; and other information developed from above.

Records pertaining to security violations may contain information pertaining to circumstances of the violation; witness statements; investigator's notes; and documentation of agency action taken in response to security violations.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 5 U.S.C. 3301; 44 U.S.C. 3101; Executive Order 10450; Executive Order 13488; 5 CFR 5.2; 5 CFR 731 and 736; *5 CFR 1400;* OMB Circular No. A–130 Revised, Appendix III, 61 FR 6428; and *HSPD 12.*

### PURPOSE(S):

The records in this system of records are used to document and support decisions as to the suitability, eligibility, and fitness for service of applicants for federal employment and contract positions, and may include students, interns, or volunteers, to the extent their duties require access to federal facilities, information, systems, or applications.

The records may also be used to help streamline and make more efficient the investigations and adjudications processes generally.

The records *additionally* may be used to document security violations and supervisory actions taken in response to such violations.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).
2. A record from this system of records may be disclosed to an authorized source from which information is requested in the course of an investigation, to the extent necessary to identify the individual, to inform the source of the nature and purpose of the investigation, or to identify the type of information requested.
3. A record from this system of records may be disclosed to the *Office of Personnel Management,* the Merit Systems Protection Board, the Federal Labor Relations Authority, or the Equal Employment Opportunity Commission to carry out its respective authorized functions (under 5 U.S.C. 1103, 1204, and 7105, and 42 U.S.C. 2000e–4, in that order).

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; social security number; unique case serial number; or other unique identifier.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Director, Workplace Solutions Department, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Applications and other personnel and security forms, including but not limited to a SF–85, SF–85P, SF–86, SF–87 (via eQIP); personal interviews with various individuals, including but not limited to the subject of the investigation present and former employers, references, neighbors, and other associates who may have information about the subject of the investigation; investigative records and notices of personnel actions furnished by other federal agencies; public records such as court filings; publications such as newspapers, magazines, and periodicals; tax records; educational institutions; police departments; credit bureaus; probation officials; prison officials; and medical professionals.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

Pursuant to 5 U.S.C. 552a(k)(5), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

## PBGC–13: Debt Collection

### SYSTEM NAME:

Debt Collection—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrators, plan administrator, and paying agent worksites.

Records may also be kept at an additional location as back up for Continuity of Operations.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who may owe a debt to PBGC, including but not limited to: Pension plans and/or sponsors owing insurance premiums, interest, and penalties; employees and former employees of PBGC; individuals who are consultants and vendors to PBGC; participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by the *Employee Retirement Income Security Act of 1974* (ERISA); and individuals who received payments to which they are not entitled.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Pension plan filings; names; addresses; social security numbers; taxpayer identification numbers; employee numbers; pay records; travel vouchers and related documents filed by PBGC employees; invoices filed by consultants and vendors to PBGC; records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and other relevant records relating to a debt including the amount, status, and history of the debt, and the program under which the debt arose.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 31 U.S.C. 3711(a); 44 U.S.C. 3101; 5 U.S.C. 301.

### PURPOSE(S):

This system of records is maintained for the purpose of collecting debts owed to PBGC by various individuals, including, but not limited to, pension plans and/or sponsors owing insurance premiums, interest and penalties; PBGC employees and former employees; consultants and vendors; participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and individuals who received payments from PBGC to which they are not entitled. This system facilitates PBGC's compliance with the Debt Collection Improvement Act of 1996.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system of records may be disclosed to the United States Department of the Treasury for cross-servicing to effect debt collection in accordance with 31 U.S.C. 3711(e).

3. Names, addresses, and telephone numbers of employees, participants, and beneficiaries and information pertaining to debts owed by such individuals to PBGC may be disclosed to a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.

4. These records may be used to disclose information to any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

i. Request for repayment by telephone or in writing;

ii. Negotiation of voluntary repayment or compromise agreements;

iii. Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

iv. Referral of debts to private collection agencies, to Treasury designated debt collection centers, or for litigation;

v. Administrative and court-ordered wage garnishment;

vi. Debt sales;

vii. Publication of names and identities of delinquent debtors in the media or other appropriate places; and

viii. Any other debt collection method authorized by law;

b. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

c. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties; or,

d. For any other appropriate debt collection purpose.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Employer identification number; social security number; plan number; name of debtor, plan, plan sponsor, plan administrator, participant, alternate payee, or beneficiary.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention

Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

#### SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

#### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

#### RECORD SOURCE CATEGORIES:

Subject individuals; plan administrators; labor organization officials; debt collection agencies or firms; firms or agencies providing locator services; field benefit administrators, and other federal agencies.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

### PBGC–14: My Plan Administration Account Records

#### SYSTEM NAME:

My Plan Administration Account Records—PBGC.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who use the My Plan Administration Account (My PAA) application to make PBGC filings and payments electronically via PBGC's Web site (*www.pbgc.gov*), including individuals acting for plan sponsors, plan administrators, and pension practitioners such as enrolled actuaries and other benefit professionals.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

User's name; work telephone number; work email address; other contact information; a temporary PBGC-issued user ID and password; a user-selected user ID and password; a secret question/secret answer combination for authentication; *IP addresses;* for each pension plan for which the user intends to participate in making filings with PBGC: The plan name; employer identification number (EIN); plan number (PN); the plan administrator's name, address, phone number, email address, and other contact information; and the role that the user will play in the filing process, *e.g.,* creating and editing filings, signing filings electronically as the plan administrator, signing filings electronically as the enrolled actuary, or authorizing payments to PBGC.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302, 1306, 1307, 1341, and 1343; 44 U.S.C. 3101; 5 U.S.C. 301.

#### PURPOSE(S):

This system of records is maintained for use in verifying the identity of individuals who register to use the My PAA application to make PBGC filings, and receiving, authenticating, processing, and keeping a history of filings and premium payments submitted to PBGC by registered users.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G4 *through* G7; G9, G10, G12, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in electronic form, including computer databases, magnetic tapes and discs. Records are also maintained on PBGC's network back-up tapes.

#### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; user ID; email address; telephone number; plan name; EIN; or plan number.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to unauthorized individuals.

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Financial Operations Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Registered users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–15: Emergency Notification Records

SYSTEM NAME:

Emergency Notification Records—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and individuals who work for PBGC as contractors or as employees of contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; title; organizational component; employer; PBGC and personal telephone numbers; PBGC and personal email addresses; other contact information; user ID; a temporary PBGC-issued password; and a user-selected password.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; Executive Order 12656, 53 FR 47491 (1988); Presidential Decision Directive 67 (1998).

PURPOSE(S):

This system of records is maintained for notifying PBGC employees and individuals who work for PBGC as contractors or employees of contractors of PBGC's operating status in the event of an emergency, natural disaster or other event affecting PBGC operations; and for contacting employees or contractors who are out of the office on leave or after regular duty hours to obtain information necessary for official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G4, G5, G7, and G9 through G11, *and G14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record in this system of records may be disclosed to family members, emergency medical personnel, or to law enforcement officials in case of a medical or other emergency involving the subject individual (without the subsequent notification prescribed in 5 U.S.C. 552a(b)(8)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form, including magnetic tapes and discs. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; organizational component; or user ID and password.

SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in locked file cabinets in areas of restricted access. Electronic records are stored on computer networks and protected by assigning both network and system-specific usernames and passwords to individuals needing access to the records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Workplace Solutions Department, PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURES:

An employee or contractor may access his or her record with a valid user-id and password via the electronic notification and messaging system through PBGC's intranet Web site, or by following the Notification Procedures above.

CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

RECORD SOURCE CATEGORIES:

Subject individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–16: PBGC Connect Search Center

SYSTEM NAME:

PBGC Connect Search Center—PBGC.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

PBGC employees and contractors with PBGC network access.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; photograph; personal description; skills; interests; schools; birthday; mobile phone number; home phone number; organizational component and title; supervisor's name; PBGC street address; room or workstation number; PBGC network ID; work email address; and work telephone number and extension.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301.

PURPOSE(S):

This system of records is used by PBGC employees and contractors to identify other PBGC employees and to access contact information for PBGC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an electronic database. Records are also maintained on PBGC's network back-up tapes.

RETRIEVABILITY:

Records are retrieved by any one or more of the following: Name; username; organizational component; job title; work phone number; office number; supervisor; work email; skills; interests; birth date; education; peers; and employee type (federal or contractor).

SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

SYSTEM MANAGER(S) AND ADDRESS:

*Division Manager, Information Technology Customer and Operations Service Division,* PBGC, 1200 K Street NW., Washington, DC 20005.

NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

#### RECORD SOURCE CATEGORIES:

Subject individuals and PBGC personnel records.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

### PBGC–17: Office of Inspector General Investigative File System

#### SYSTEM NAME:

Office of Inspector General Investigative File System—PBGC.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

Office of Inspector General, PBGC, 1200 K Street, NW., Washington DC, 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals named in investigations conducted by the *Office of Inspector General* (OIG); complainants and subjects of complaints collected through the operation of the OIG Hotline; other individuals, including witnesses, sources, and members of the general public who are named individuals in connection with investigations conducted by OIG.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Information within this system relates to OIG investigations carried out under applicable statutes, regulations, policies, and procedures. The investigations may relate to criminal, civil, or administrative matters. These OIG files may contain investigative reports; copies of personnel, financial, contractual, and property management records maintained by PBGC; information submitted by or about pension plan sponsors or plan participants; background data including arrest records, statements of informants and witnesses, and laboratory reports of evidence analysis; search warrants, summonses and subpoenas; and other information related to investigations. Personal data in the system may consist of names, social security numbers, addresses, dates of birth and death, fingerprints, handwriting samples, reports of confidential informants, physical identifying data, voiceprints, polygraph tests, photographs, and individual personnel and payroll information.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 3.

#### PURPOSE(S):

This system of records is used to supervise and conduct investigations relating to programs and operations of PBGC.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1, G2, G4, G5, G7, and G9 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record relating to a person held in custody pending or during arraignment, trial, sentence, or extradition proceedings or after conviction may be disclosed to a federal, state, local, or foreign prison; probation, parole, or pardon authority; or any other agency or individual involved with the maintenance, transportation, or release of such a person.

3. A record relating to a case or matter may be disclosed to an actual or potential party or his or her attorney for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining, or informal discovery proceedings.

4. A record may be disclosed to any source, either private or governmental, when reasonably necessary to elicit information or obtain the cooperation of a witness or informant when conducting any official investigation or during a trial or hearing or when preparing for a trial or hearing.

5. A record relating to a case or matter may be disclosed to a foreign country, through the United States Department of State or directly to the representative of such country, under an international treaty, convention, or executive agreement; or to the extent necessary to assist such country in apprehending or returning a fugitive to a jurisdiction that seeks that individual's return.

6. A record originating exclusively within this system of records may be disclosed to other federal offices of inspectors general and councils comprising officials from other federal offices of inspectors general, as required by the Inspector General Act of 1978, as amended. The purpose is to ensure that OIG investigative operations can be subject to integrity and efficiency peer reviews, and to permit other offices of inspectors general to investigate and report on allegations of misconduct by senior OIG officials as directed by a council, the President, or Congress. Records originating from any other PBGC systems of records, which may be duplicated in or incorporated into this system, also may be disclosed with all personally identifiable information redacted.

7. A record may be disclosed to the Department of the Treasury and the Department of Justice when the OIG seeks an ex parte court order to obtain taxpayer information from the Internal Revenue Service.

8. A record may be disclosed to any governmental, professional or licensing authority when such record reflects on qualifications, either moral, educational or vocational, of an individual seeking to be licensed or to maintain a license.

9. A record may be disclosed to any direct or indirect recipient of federal funds, *e.g.*, a contractor, where such record reflects problems with the personnel working for a recipient, and disclosure of the record is made to permit a recipient to take corrective action beneficial to the Government.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, discs, and an automated database.

#### RETRIEVABILITY:

Records may be retrieved by any one or more of the following: Name; social security number; subject category; or assigned case number.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records, computers, and computer-storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge. Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections. Computers are protected by mechanical locks, card-key systems, or other physical-access control methods. The use of computer systems is regulated with installed security software, computer-logon identifications, and operating-system controls including access controls, terminal and transaction logging, and file-management software.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

This system is exempt from the notification requirements. However, consideration will be given to inquiries made in compliance with 29 CFR 4902.3.

### RECORD ACCESS PROCEDURE:

This system is exempt from the access requirements. However, consideration will be given to requests made in compliance with 29 CFR 4902.3.

### CONTESTING RECORD PROCEDURE:

This system is exempt from the notification requirements. However, consideration will be given requests made in compliance with 29 CFR 4902.3.

### RECORD SOURCE CATEGORIES:

Subject individuals; individual complainants; witnesses; interviews conducted during investigations; federal, state and local government records; individual or company records; claim and payment files; employer medical records; insurance records; court records; articles from publications; financial data; bank information; telephone data; service providers; other law enforcement organizations; grantees and subgrantees; contractors and subcontractors; pension plan sponsors and participants; and other sources.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j) and (k), PBGC has established regulations at 29 CFR 4902.11 that exempt records in this system depending on their purpose.

## PBGC–19: Office of General Counsel Case Management System

### SYSTEM NAME:

Office of General Counsel Case Management System—PBGC.

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 *and 1275* K Street NW., Washington, DC 20005.

Records may also be kept at an additional location as backup for Continuity of Operations.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are participants, beneficiaries, and alternate payees in pension plans covered by the *Employee Retirement Income Security Act of 1974* (ERISA); pension plan sponsors, administrators, control group members and third parties, who are responsible for, manage, or have control over ERISA pension plans; other individuals who are identified in connection with investigations conducted pursuant to section 4003(a) of ERISA and/or litigation conducted with regard to ERISA pension plans; individuals (including PBGC employees) who are parties or witnesses in civil litigation or administrative proceedings involving or concerning PBGC or its officers or employees; individuals who are the subject of a breach of personally identifiable information; individuals who are potential contractors or contractors with PBGC or are otherwise personally associated with a contract or procurement matter; individuals who receive legal advice from the Office of General Counsel; and other individuals (including current, former, and potential PBGC employees, contract employees, interns, externs, and volunteers) who are the subject of or are otherwise connected to an inquiry, investigation, other matter handled by the Office of General Counsel.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Notes, reports, memoranda; settlements; agreements; correspondence; contracts; contract proposal and other procurement documents; plan documents; participant, alternate payee, and beneficiary files; initial and final PBGC determinations of ERISA matters; Freedom of Information Act and the Privacy Act appeals and decisions of those appeals; drafts and legal reviews of proposed personnel actions; personnel records; litigation files; labor relations files; information provided by labor unions or other organizations; witness statements; summonses and subpoenas, discovery requests and responses; and breach reports and supporting documentation.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1055, 1056(d)(3), 1302, 1303, 1310, 1321, 1322, 1322a, 1341, 1342, 1343 and 1350; 5 U.S.C. app. 105; 5 U.S.C. 301, *552a(d), 552(a), 7101; 42 U.S.C. 2000e et seq.;* 44 U.S.C. 3101.

### PURPOSE(S):

The purpose of this system of records is to catalog, litigate, or otherwise resolve any case or matter handled by the following practice groups of the Office of the General Counsel: General Law and Ethics Group, General Law and Procurement Group, Litigation and Employment Law Group, Legal Technology & Administration Division, and ERISA Counseling Group.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).
2. A record from this system of records may be disclosed, in furtherance of proceedings under Title IV of ERISA, to a contributing sponsor (or other employer who maintained the plan), including any predecessor or successor, and any member of the same controlled group.
3. Names, addresses, and telephone numbers of employees, former employees, participants, and beneficiaries and information pertaining to debts to PBGC may be disclosed to the Department of Treasury, the Department of Justice, a credit agency, and a debt collection firm to collect the debt. Disclosure to a debt collection firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act.
4. Information may be disclosed to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations in response to a court order or in connection with criminal law proceedings.
5. Information may be provided to a congressional office in response to an inquiry

made at the request of the individual to whom the record pertains.

6. Information may be provided to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

7. Relevant and necessary information may be disclosed to a former employee of PBGC for the purposes of: (1) Responding to an official inquiry by federal, state, or local government entity or professional licensing authority; or, (2) facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where PBGC requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

8. A record relating to a case or matter may be disseminated to a foreign country pursuant to an international treaty or convention entered into and ratified by the United States or to an executive agreement.

9. A record may be disseminated to a foreign country, through the United States Department of State or directly to the representative of such country, to the extent necessary to assist such country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest.

10. *A record from this system of records may be disclosed to the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures and compliance with the Freedom of Information Act, and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.*

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are indexed by assigned case number and sequential record ID. Records are full-text indexed and thus can be retrieved by any free-form key, which may include names or other personal identifiers.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours.

Electronic records are stored on computer networks and protected by assigning unique user identification numbers to individuals who are authorized to access the records, and by passwords set by these users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel, PBGC, 1200 K Street NW., Washington, DC 20005.

*Notification Procedure:* Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; pension plan participants, sponsors, administrators and third-parties; federal government records; current and former employees, contractors, interns, and externs; PBGC claim and payment files; insurers; the Social Security Administration; labor organizations; court records; articles from publications; and other individuals, organizations, and corporate entities with relevant knowledge/information.

### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

## PBGC–21: Reasonable Accommodation Records

### SYSTEM NAME:

Reasonable Accommodation Records—PBGC.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former employees of PBGC who request and/or receive a reasonable accommodation for a disability; and authorized individuals or representatives (*e.g.,* family members, union representatives, or attorneys) who file a request for a reasonable accommodation on behalf of a prospective, current, or former employee.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name and employment information of employee needing an accommodation; requester's name and contact information (if different than the employee who needs an accommodation); date request was initiated; information concerning the nature of the disability and the need for accommodation, including appropriate medical documentation; details of the accommodation request, such as: Type of accommodation requested, how the requested accommodation would assist in job performance, the sources of technical assistance consulted in trying to identify alternative reasonable accommodation, any additional information provided by the requester relating to the processing of the request, and whether the request was approved or denied, and whether the accommodation was approved for a trial period; notification(s) to the employee and his/her supervisor(s) regarding the accommodation.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 29 U.S.C. 701 *et seq.;* 42 U.S.C. 12101 *et seq.;* Executive Order 13164 (July 26, 2000); and Executive Order 13548 (July 26, 2010).

#### PURPOSE(S):

The purposes of this system are: (1) To allow PBGC to collect and maintain records on prospective, current, and former employees with disabilities who requested or received reasonable accommodation by PBGC; (2) to track and report the processing of requests for reasonable accommodation PBGC-wide to comply with applicable law and regulations; and (3) to preserve and maintain the confidentiality of medical information submitted by or on behalf of applicants or employees requesting reasonable accommodation.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).
2. A record from this system of records may be disclosed to physicians or other medical professionals to provide them with or obtain from them the necessary medical documentation and/or certification for reasonable accommodation.
3. A record from this system of records may be disclosed to another federal agency or commission with responsibility for labor or employment relations or other issues, including equal employment opportunity and reasonable accommodation issues, when that agency or commission has jurisdiction over reasonable accommodation issues.
4. A record from this system of records may be disclosed to the Office of Management and Budget (OMB), Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), or Office of Special Counsel (OSC) to obtain advice regarding statutory, regulatory, policy, and other requirements related to reasonable accommodation.
5. A record from this system of records may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.
6. A record from this system of records may be disclosed to the Department of Defense (DOD) for purposes of procuring assistive technologies and services through the Computer/Electronic Accommodation Program in response to a request for reasonable accommodation.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in paper and in electronic form, including computer databases.

#### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Employee name or assigned case number.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Only authorized personnel may be given access to either the secured area or the locked file cabinet.

Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

#### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

#### SYSTEM MANAGER(S) AND ADDRESS:

Reasonable Accommodation Coordinator, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

#### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

#### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

#### RECORD SOURCE CATEGORIES:

Subject individuals; individual making the request (if different than the subject individuals); medical professionals; and the subject individuals' supervisor(s).

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

### PBGC–22: Telework and Alternative Worksite Records

#### SYSTEM NAME:

Telework and Alternative Worksite Records—PBGC.

#### SECURITY CLASSIFICATION:

None.

#### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Prospective, current, and former employees of PBGC who have been granted or denied authorization to participate in PBGC's Telework Program to work at an alternative worksite apart from their official PBGC duty station.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, position title, grade, job series, and department name; official PBGC duty station address and telephone number; alternative worksite address and telephone number(s); date telework agreement received and approved/denied; telework request and approval form; telework agreement, self-certification home safety checklist, and supervisor-employee checklist; type of telework requested (*e.g.,* episodic or regular); regular work schedule; telework schedule; approvals/disapprovals; description and list of government-owned equipment and software provided to the teleworker; mass transit benefits received through PBGC's mass transit subsidy program; parking subsidies received through PBGC's subsidized parking program; and any other miscellaneous documents supporting telework.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 5 U.S.C. 6120.

#### PURPOSE(S):

The purpose of this system of records is to collect and maintain records on prospective, current, and former employees who have participated in, presently participate in, or have sought to participate in PBGC's Telework Program.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G*14* apply to this system of records (see Prefatory Statement of General Routine Uses).

2. A record from this system may be disclosed to federal, state, or local governments during actual emergencies, exercises, or continuity of operations tests for the purposes of emergency preparedness and responding to emergency situations.

3. A record from this system may be disclosed to the Department of Labor when an employee is injured when working at home while in the performance of normal duties.

4. A record from this system may be disclosed to the Office of Personnel Management (OPM) for use in its Telework Survey to provide consolidated data on participation in PBGC's Telework Program.

5. A record from this system of records may be disclosed to appropriate third-parties contracted by the Agency to facilitate mediation or other dispute resolution procedures or programs.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

#### STORAGE:

Records are maintained in paper and electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

Also, each of PBGC's departments has a Telework Liaison who maintains copies of the records pertaining to employees working in his or her department.

#### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Employee name; and the department in which the employee works, will work, or previously worked.

#### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are locked after office hours. Only authorized personnel may be given access to either the secured area or the locked file cabinet.

Electronic records are stored on computer networks and protected by assigning both network and system-specific user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

#### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

#### SYSTEM MANAGER(S) AND ADDRESS:

Agency Telework Managing Officer, Workplace Solutions Department, PBGC, 1200 K Street NW., Washington, DC 20005.

#### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; subject individuals' supervisors.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

## PBGC–23: Internal Investigations of Allegations of Harassing Conduct

### SYSTEM NAME:

Internal Investigations of Allegations of Harassing Conduct—PBGC

### SECURITY CLASSIFICATION:

None.

### SYSTEM LOCATION:

PBGC, 1200 K Street NW., Washington, DC 20005.

*Records may also be kept at an additional location as backup for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former PBGC employees, contractors, and interns who have filed a complaint or *made a* report of harassment, or have been accused of harassing conduct.

### CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains all documents related to a complaint or report of harassment, which may include the name, position, grade, and supervisor(s) of the complainant and the accused; the complaint; statements of witnesses; reports of interviews; final decisions and corrective actions taken; and related correspondence and exhibits.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 44 U.S.C. 3101; 5 U.S.C. 301; 42 U.S.C. 2000e *et seq.*

### PURPOSE:

This system of records is maintained for the purpose of upholding PBGC's policy to prevent *and eradicate* harassing conduct in the workplace, including conducting and resolving internal investigations of allegations of *harassing conduct* brought by or against PBGC employees.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. PBGC General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).

2. Disclosure of information from this system of records regarding the status of any investigation that may have been conducted may be made to the complaining party and to the *individual against whom the complaint was made* when the purpose of the disclosure is both relevant and necessary and is compatible with the purpose for which the information was collected.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: name; department; or unique identifier assigned to each incident reported.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in cabinets in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGERS AND ADDRESS:

Director, Human Resources Department, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. The address to which the record information should be sent.
d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.
b. Any available information regarding the type of record involved.
c. A statement specifying the changes to be made in the records and the justification therefor.
d. The address to which the response should be sent.
e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; *PBGC* supervisors, employees, *contractors, and others* with knowledge; outside counsel retained by subject individuals; and medical professionals.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2), records in this system are exempt from the requirements of subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), (I), and (f) of 5 U.S.C. 552a, provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of the material would reveal the identity of a source who furnished information to the Government with an express promise that the identity of the source would be held in confidence.

## PBGC–24: Participant Debt Collection

### SYSTEM NAME:

*Participant Debt Collection—PBGC.*

### SECURITY CLASSIFICATION:

*None.*

### SYSTEM LOCATION:

*PBGC, 1200 K Street NW., Washington, DC 20005, and/or field benefit administrators, plan administrator, and paying agent worksites.*

*Records may also be kept at an additional location as back up for Continuity of Operations.*

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who may owe a debt to PBGC, including but not limited to: Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and individuals who received payments to which they are not entitled.

### CATEGORIES OF RECORDS IN THE SYSTEM:

*Pension plan filings; names; addresses; social security numbers; taxpayer identification numbers; records of benefit payments made to participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by ERISA; and other relevant records relating to a debt including the amount, status, and history of the debt, and the program under which the debt arose.*

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 1302; 31 U.S.C. 3711(a); 44 U.S.C. 3101; 5 U.S.C. 301.

### PURPOSE(S):

*This system of records is maintained for the purpose of collecting debts owed to PBGC by various individuals, including, but not limited to: Participants, alternate payees, and beneficiaries in terminating and terminated pension plans covered by the Employee Retirement Income Security Act of 1974 (ERISA); and individuals who received payments from PBGC to which they are not entitled. This system facilitates PBGC's compliance with the Debt Collection Improvement Act of 1996.*

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:*

1. *General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses).*
2. *A record from this system of records may be disclosed to the United States Department of the Treasury for cross-servicing to effect debt collection in accordance with 31 U.S.C. 3711(e).*
3. *Names, addresses, and telephone numbers of participants and beneficiaries and information pertaining to debts owed by such individuals to PBGC may be disclosed to a debt collection agency or firm to collect a claim. Disclosure to a debt collection agency or firm shall be made only under a contract that binds any such contractor or employee of such contractor to the criminal penalties of the Privacy Act. The information so disclosed shall be used exclusively pursuant to the terms and conditions of such contract and shall be used solely for the purposes prescribed therein. The contract shall provide that the information so disclosed shall be returned at the conclusion of the debt collection effort.*
4. *These records may be used to disclose information to any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):*

a. *To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:*

i. *Request for repayment by telephone or in writing;*
ii. *Negotiation of voluntary repayment or compromise agreements;*
iii. *Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;*
iv. *Referral of debts to private collection agencies, to Treasury designated debt collection centers, or for litigation;*
v. *Administrative and court-ordered wage garnishment;*
vi. *Debt sales;*
vii. *Publication of names and identities of delinquent debtors in the media or other appropriate places; and*
viii. *Any other debt collection method authorized by law;*

b. *To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;*

c. *To account or report on the status of debts for which such entity has a financial* or other legitimate need for the information in the performance of official duties; or,

d. For any other appropriate debt collection purpose.

### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

### STORAGE:

Records are maintained in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's network back-up tapes.

### RETRIEVABILITY:

Records are retrieved by any one or more of the following: Employer identification number; social security number; plan number; recovery tracking number, name of debtor, plan, plan sponsor, plan administrator, participant, alternate payee, or beneficiary.

### SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file folders in areas of restricted access that are locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

### RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA.

Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media sanitization practice.

### SYSTEM MANAGER(S) AND ADDRESS:

Chief of Benefits Administration, Office of Benefits Administration, PBGC, 1200 K Street NW., Washington, DC 20005.

### NOTIFICATION PROCEDURE:

Individuals wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. The address to which the record information should be sent.

d. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

Individuals requesting access must also comply with PBGC's Privacy Act regulations regarding verification of identity and access to records (29 CFR 4902.3).

### CONTESTING RECORD PROCEDURE:

Individuals wishing to request an amendment to their records should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW., Washington, DC 20005, and provide the following information:

a. Full name.

b. Any available information regarding the type of record involved.

c. A statement specifying the changes to be made in the records and the justification therefor.

d. The address to which the response should be sent.

e. You must sign your request.

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for the representative to act on their behalf.

### RECORD SOURCE CATEGORIES:

Subject individuals; plan administrators; labor organization officials; debt collection agencies or firms; firms or agencies providing locator services; field benefit administrators, and other federal agencies.

### EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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Part IV

## National Archives and Records Administration

Information Security Oversight Office

32 CFR Part 2002
Controlled Unclassified Information; Final Rule

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office

### 32 CFR Part 2002

**[FDMS No. NARA–15–0001; NARA–2016–048]**

**RIN 3095–AB80**

## Controlled Unclassified Information

**AGENCY:** Information Security Oversight Office, NARA.

**ACTION:** Final rule.

**SUMMARY:** As the Federal Government's Executive Agent (EA) for Controlled Unclassified Information (CUI), the National Archives and Records Administration (NARA), through its Information Security Oversight Office (ISOO), oversees the Federal Government-wide CUI Program. As part of that responsibility, ISOO is issuing this rule to establish policy for agencies on designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI, self-inspection and oversight requirements, and other facets of the Program. The rule affects Federal executive branch agencies that handle CUI and all organizations (sources) that handle, possess, use, share, or receive CUI—or which operate, use, or have access to Federal information and information systems on behalf of an agency.

**DATES:** This rule is effective November 14, 2016. The Director of the Federal Register approves the incorporation by reference of certain publications listed in the rule as of November 14, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Keravuori, by email at *regulation_comments@nara.gov,* or by telephone at 301–837–3151. You may also find more information about the CUI Program, and some FAQs, on NARA's Web site at *http://www.archives.gov/cui/.*

**SUPPLEMENTARY INFORMATION:**

### Background

In November 2010, the President issued Executive Order 13556, Controlled Unclassified Information, 75 FR 68675 (November 4, 2010) (the Order) to "establish an open and uniform program for managing [unclassified] information that requires safeguarding or dissemination controls." Prior to that time, more than 100 different markings for such information existed across the executive branch. This *ad hoc,* agency-specific approach created inefficiency and confusion, led to a patchwork system that failed to adequately safeguard information requiring protection, and unnecessarily restricted information-sharing.

As a result, the Order established the Controlled Unclassified Information (CUI) Program to standardize the way the executive branch handles information that requires safeguarding or dissemination controls (excluding information that is classified under Executive Order 13526, Classified National Security Information, 75 FR 707 (December 29, 2009), or any predecessor or successor order; or the Atomic Energy Act of 1954 (42 U.S.C. 2011, *et seq*), as amended). To develop policy and provide oversight for the CUI Program, the Order also appointed NARA as the CUI EA. NARA has delegated this authority to the Director of ISOO, a NARA component.

### Regulatory Analysis

#### *Review Under Executive Orders 12866 and 13563*

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (September 30, 1993), and Executive Order 13563, Improving Regulation and Regulation Review, 76 FR 23821 (January 18, 2011), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This final rule is "significant" under section 3(f) of Executive Order 12866 because it sets out a new program for Federal agencies. The Office of Management and Budget (OMB) has reviewed this regulation.

#### *Review Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.)*

Although this rule is not subject to the Regulatory Flexibility Act, *see* 5 U.S.C. 553(a)(2), 601(2), NARA has considered whether this rule, if promulgated, would have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). NARA certifies, after review and analysis, that this rule will not have a significant adverse economic impact on a substantial number of small entities.

#### *Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This final rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

#### *Review Under Executive Order 13132, Federalism, 64 FR 43255 (August 4, 1999)*

Review under Executive Order 13132 requires that agencies review regulations for Federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, prepare a Federal assessment to assist senior policy makers. This rule will not have any direct effects on state and local governments within the meaning of the Executive Order. Therefore, the regulation requires no Federalism assessment.

### Public Comments

#### *General*

NARA published a proposed version of this rule in the **Federal Register** on May 5, 2015 (80 FR 26501), with a 60-day public comment period ending on July 7, 2015. We received 29 written responses, totaling 245 individual comments, and numerous phone calls, email questions, and requests for information or clarification. Comments came from individuals, contractors, businesses, non-government organizations, academic and research organizations, state organizations, Federal agencies, and Representative Bennie G. Thompson, ranking member of the House Committee on Homeland Security. Most commenters, including Congressman Thompson, were in support of the CUI Program and the goals and structure of the regulation. Most also offered suggestions to clarify or revise provisions or had questions or confusion regarding particular provisions. Of particular concern to a number of commenters was the distinction between contractors and other non-executive branch entities, and the distinction between what is set out in the regulation and what will instead be contained in written agreements with agencies. We have made a number of changes to the regulation to address these and other similar topics.

Several commenters recommended we establish more stringent controls on CUI, and some commenters recommended we impose less stringent controls. We have declined to make either change. The CUI Program must balance two goals that may sometimes compete with each other—ensuring standardized controls to the extent necessary to protect information, and ensuring standardized controls to enable authorized sharing of information. We must also balance between some agencies' needs for free exchange of information with multiple partners in a wide variety of circumstances and other agencies' needs for limitations on access to protected information, and balance the desired end result against the potential burden of re-marking documents, training staff, and similar activities. Therefore, the controls established for CUI are between the two ends recommended in many comments. However, we have revised several sections of the rule in response to both public and agency comments to more clearly explain how the different levels of CUI interact, the basis for CUI controls, what levels of control agencies may impose within the agency and outside the agency, the rules governing written agreements and information sharing, CUI marking and how to treat legacy information, destruction options, controls on dissemination, and other similar subject areas also expressed by the commenters.

*CUI Security Standards and Application Outside the Federal Government*

We received a few comments, primarily from academic and research entities, asserting that the safeguarding requirements required by the proposed regulation, and the guidance in the new National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171, Protecting Controlled Unclassified Information in Non-Federal Information Systems and Organizations, would be too extreme and burdensome, and would cost these entities potentially a great deal of money to implement. These commenters were unable to determine a more specific estimated cost without prolonged study and assessment. However, their concerns arose primarily from the nature of their current systems—which apparently do not comply with statutory and other information security controls that already applied to Federal information before this rule was drafted, and continue to apply. Apparently, the systems are also heavily decentralized, unmonitored, and open, to enable people to work with the information across a wide range of locations and to share information and resources freely. These commenters suggested providing additional public response time to assess the burden of implementing this regulation and NIST SP 800–171 because one standard comment period was insufficient time for them to consider all the impacts of implementing the NIST standards. They also suggested lower controls or exceptions to controlling the information when in the hands of such entities, and other reductions in the security requirements for CUI while in their hands. We have declined both suggestions for the reasons described below.

The Federal Government receives a great deal of information from individuals, businesses, and other entities that it is required to protect. This is not an optional set of requirements and the burden on the Federal Government of meeting these requirements is huge. It costs the Government billions of dollars to keep its information, systems, and facilities secure. But the American people expect their Government to appropriately safeguard sensitive information, and with good reason. When the Government provides controlled information to a non-executive branch entity, sometimes pursuant to a contract or other agreement, it does not make sense for the protection requirements to disappear or lessen just because the Government has shared the information. In fact, the protection requirements do *not* disappear or lessen. The Federal Government remains obligated to ensure that the information remains protected. It would be nonsensical to require the Government to protect and control information but to simultaneously allow others to leave the same information unprotected. The dispositive issues are not who protects the information, whether it is difficult or costly to protect it, or even how one goes about protecting it; the dispositive issue is that certain laws or similar authority require the Government, and by extension, those who handle or receive it, to protect this information.

Agencies must be able to provide protected information to law enforcement organizations to facilitate criminal investigations, provide people who served in the military (or their authorized relative) with copies of their military records so they can seek benefits, provide technological specifications or demographic and other personal information to contractors and researchers developing technology or conducting studies, share information on infectious diseases and epidemics with other health organizations locally or around the world to engage in joint efforts to contain them, and more. These information-sharing needs must still occur within the parameters permitted by the laws, regulations, or Government-wide policies that govern access to the information, and must be balanced by protection requirements. Sharing that information with non-executive branch entities is easier and can occur more extensively if those entities are complying with the same levels of protection controls. As a result of these reasons, and others set out in comment responses below, we decline to reduce or eliminate this rule's protection controls for information agencies share with non-executive branch entities.

Most of these comments on burden and time did not cite burdens arising from the rule itself. Instead, they cited the burden of implementing the recently published NIST SP 800–171.

The NIST SP 800–171, incorporated by reference in this final rule, establishes guidance for protecting CUI in non-Federal systems: (1) When the CUI is resident in non-Federal information systems and organizations; (2) when the information systems where the CUI resides are not used or operated by contractors of Federal agencies or other organizations on behalf of those agencies; and (3) when the authorizing law, Federal regulation, or Government-wide policy listed in the CUI Registry for the CUI category or subcategory does not prescribe specific safeguarding requirements for protecting the CUI's confidentiality.

*Federal Information Systems Modernization Act (FISMA), 44 U.S.C. 3541, et seq, Information Security Requirements, NIST and FIPS Standards, This Regulation, and Moderate Confidentiality Impact Value*

With regard to the information security standards incorporated by reference in the rule, the framework established by FISMA requires most Federal agencies to apply the standards in Federal Information Processing Standards (FIPS) Publication 199, Standards for Security Categorization of Federal Information and Information Systems, and FIPS Publication 200, Minimum Security Requirements for Federal Information and Information Systems. FIPS Publication 200 requires most agencies to use NIST SP 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, as the means by which agencies assess security risks to Federal information systems and select appropriate security controls and assurance requirements for them. Non-executive branch entities that manage information systems on behalf of covered agencies are subject to these rules and requirements as though they are part of the agency.

FIPS Publication 199, FIPS Publication 200, NIST SP 800–53, NIST SP 800–88, and NIST SP 800–171 are incorporated by reference into this final rule. They are free and available for download from the NIST Web site at *http://www.nist.gov/publication-portal.cfm.* FIPS Publication 199 requires covered Federal agencies to categorize their information systems in each of the security objectives of confidentiality, integrity, and availability, including rating each system as low, moderate, or high impact in each category. This CUI rule does not mandate the use of FIPS Publication 199; FISMA establishes the requirement to use FIPS Publication 199. Nor does it incorporate the extensive standards set out in FIPS Publication 199 for how agencies go about categorizing and rating their systems, which are beyond the scope of this rule. Instead, within that already-established framework governing Federal information systems, this regulation requires agencies to secure CUI (that is on information systems) by storing and using it only on information systems the agency categorizes at no less than the moderate confidentiality impact level (unless the authorizing law, regulation, or Government-wide policy listed in the CUI Registry for that CUI category or subcategory prescribes specific safeguarding requirements for protecting the confidentiality of that CUI).

NIST SP 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, and NIST SP 800–88, Guidelines for Media Sanitization, are also incorporated by reference because they set out methods by which agencies may sanitize equipment like photocopiers or destroy CUI to the appropriate degree.

When agencies design and manage Federal information systems, they apply the FISMA. This rule informs them that, if their systems include CUI, they must incorporate the requirement to safeguard CUI at no less than the moderate confidentiality impact value into their design and management actions (unless the authorizing law, regulation, or Government-wide policy listed in the CUI Registry for that CUI category or subcategory prescribes specific safeguarding requirements for protecting the confidentiality of that CUI).

*Comments*

Sec. 2002.1 Purpose and Scope

We received numerous comments on § 2002.1. Some asked us to clarify certain provisions, like whether the regulation applies to contractors; whether there is a difference between contractors and non-executive branch entities; when agencies must enter into contracts or other written agreements; what the difference is between contracts and written agreements, if any; whether the provisions apply to other forms of agreements, such as grants, licenses, certificates, cooperative agreements, etc.; and what recourse contractors have when handling CUI for an agency, to include sharing that information with other non-executive branch entities.

We determined from the number and scope of the comments that we needed to thoroughly revise this section to make it clearer. This section merely spells out that the regulation's scope of impact will include non-executive branch entities by means of the requirement on agencies to include contract or agreement provisions regarding CUI, when relevant. Accordingly, we have revised the language to not only state that the rule applies to only agencies directly, but to also show that by the organization of the section. We have revised the structure of § 2002.1(e) [and § 2002.16(a)(5)] to more clearly reflect this, and to clarify what agencies should do when they cannot enter into a written agreement containing a CUI handling provision of this kind.

The rule now says that it applies only to executive branch agencies, but that, in written agreements (including contracts, grants, licenses, certificates, and other agreements) that involve CUI, agencies must include provisions that require the non-executive branch entity to handle the CUI in accordance with this rule, the Order, and the CUI Registry. These written agreement provisions will also help ensure that non-executive branch entities are aware of requirements associated with handling CUI, as appropriate.

Information that non-executive branch entities generate themselves and that they do not create, collect, or possess for the Federal Government by definition does not constitute Federal CUI, nor would it fall within the provisions of a contract or information-sharing agreement covering CUI. We have slightly revised the definition of CUI under § 2002.4 to make this clearer. We agree that contracts or solicitations for projects in which CUI will not be involved should not include requirements for handling CUI. This will be handled through the FAR case and other contracting practices, rather than through this regulation. If a contractor feels CUI requirements are included erroneously, they may object through normal contracting channels. Such subjects are outside the scope of this regulation.

In response to comments regarding CNSS policies, we do not list particular applicable laws, regulations, or Government-wide policies in the regulation because listing some would create confusion regarding any not listed, and the list would be too long and would have to be updated whenever one was added, revised, or rescinded, which is not practical. However, the CUI Registry lists the categories and subcategories of CUI that laws, regulations, and Government-wide policies create or govern. When we determine whether to include a particular Government-wide policy in the CUI Registry, the primary consideration is whether that policy contains requirements for control of unclassified information. CNSS policies do not; they pertain only to classified national security information. There is no such thing as unclassified national security information, although national security systems may also contain information designated as CUI. As a result, the provision of the CUI rule regarding conflict does not apply to CNSS policies, even though they are arguably Government-wide policies. CUI policies neither require an agency to stop using the CNSS policy in deference to the CUI regulation, nor permit agencies to apply CNSS requirements to CUI outside the agency or in decisions to share the CUI.

In contrast to Government-wide policies, agency-specific policies are ones that a particular agency has promulgated for its own use and the use of those who deal with that agency (including its contractors), and that are not codified in the U.S. Code, Code of Federal Regulations, or as a Government-wide policy. However, the rule does not prohibit agencies from promulgating agency-specific policies. Agencies are still able to set out agency policies and practices within their own documents and programs, and are, in fact, expected to promulgate CUI Program implementing policies within their agency to carry out the regulation's requirements. This provision makes it clear, however, that those agency-specific policies can not conflict with the regulation, the Order, or the CUI Registry.

We also responded to comments about §§ 2002.1(i), 2002.13(d) (now 2002.16), and 2002.28 (now 2002.46), with regard to restrictions on disclosure set forth in this rule that readers could override policies that implement discovery obligations in litigation, whistleblower protections, and other lawful disclosures. The comment further expressed concern about the lack of whistleblower protection in the rule. In response to these concerns, we have revised § 2002.27 (now § 2002.44) to state that the fact that an agency designates certain information as CUI does not affect an agency's or employee's determinations pursuant to any law that requires the agency or the employee to disclose that information or permits them to do so as a matter of discretion. We also included a Whistleblower Protection Act provision in that same section, and we revised § 2002.22 (challenges to CUI designation; now § 2002.50) (b)(5) to allow people the option of bringing challenges to CUI designation anonymously, and to prohibit retribution for bringing such challenges.

Sec. 2002.2 Definitions (Now § 2002.4)

We received comments on several definitions within this section. One comment asked if there are restrictions on who may be an "authorized holder," and pointed to provisions where it was not clear if an authorized holder should be the actor. We clarified throughout the regulation whether authorized holders or agencies are the actors. However, the rule does not specify who may be an authorized holder and we decline to add specific criteria. There are no simple, universal rules for authorized holders such as those the comment suggests (U.S. citizens, those with clearances, etc.), and the factors applicable are too multiple and cumbersome to include in a regulation. For some types of CUI, certain laws, regulations, or Government-wide policies establish who may be an authorized holder. Authorized holders may include people outside an agency who have a lawful Government purpose to have, transport, store, use, or process CUI, but also include people within an agency who must handle, process, store, or maintain CUI in the course of their jobs. Agencies differ widely in structure and size, so do not always have the same sets of staff positions or offices; designating particular people within agencies as authorized holders would thus not be practical. Lawful purposes to have CUI outside an agency also vary greatly with the differing missions of agencies and would be equally impractical to list. Agencies must therefore have the discretion to determine who is an authorized holder within the context of that agency's structure, missions, and governing authorities, and in compliance with the CUI EA's policies on handling CUI, including the requirements in this rule.

We received a number of comments on the definitions of "CUI," "CUI Basic," and "CUI Specified." While the comments raised concerns with a variety of aspects of the definitions, they all involved confusion about the relationship of the two groupings of CUI—Basic and Specified. As a result, we have revised all three definitions to more directly explain what each kind is and how they relate to each other. We have developed a clear set of requirements for CUI Basic that is the least burdensome and superfluous possible to uniformly cover all CUI that doesn't have a law, regulation, or Government-wide policy requiring different controls. The controls for CUI Specified categories are not something we can change because they are set by the governing law, regulation, or Government-wide policy, but by ensuring that every agency applies them consistently, we reduce burdens on agencies and external partners alike. The requirements for CUI Basic do not rise to the level of requirements for classified information, and if a given type of CUI Specified has classified-level controls, those are imposed by the information's governing authority, not by the CUI Program.

Some comments expressed concern about certain categories of information that are subject to laws and Federal regulations that set out specific and detailed protection requirements for that information, and were worried that designating them as CUI would undermine those specific requirements and subject agencies and entities to legal penalties for not meeting them.

We understand the concerns raised in these comments and agree that the penalties and consequences for failing to adequately protect CUI of some types may differ significantly from failure to protect CUI of other types. That being said, we cannot adjust the definition of CUI to exclude export controlled or other protected information; the Executive Order's definition of CUI is clear and includes *all* unclassified information that laws, regulations, and Government-wide policies require to have safeguarding or dissemination controls. However, this very concern is the reason why the CUI Program includes both CUI Basic and CUI Specified groups. When we reviewed all the types of protected unclassified information that existed across the Government, and reviewed all the authorities giving rise to each type, we were very aware that some types of protected information had specific protection requirements spelled out in laws—export-related information subject to confidentiality requirements under the Export Administration Act of 1979, as amended (EAR), being one, the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) being another—and they thus could not be handled in the same manner as the vast majority of other CUI types.

CUI Basic covers the kinds of CUI that have a general requirement for safeguarding or disseminating controls, and sets a uniform set of handling requirements for all agencies to use on all types of CUI Basic. All CUI that does not have specific protections set out in a law, regulation, or Government-wide policy falls into CUI Basic categories. All CUI Basic categories will be controlled by the same standard—no less than 'moderate' confidentiality, the lowest possible control level above the 'low' standard already applied to all information systems without CUI. CUI Basic requirements are the baseline default requirements for protecting CUI, and apply to the vast majority to CUI.

However, some CUI categories and subcategories may have higher, or different, requirements from the baseline ones if a law, regulation, or Government-wide policy requires or permits other controls for safeguarding or disseminating that information. CUI Specified, in contrast to CUI Basic, recognizes the types of CUI that have required or permitted controls included in their governing authorities, and each CUI Specified category or subcategory applies those other controls as required or permitted by the governing law, regulation, or policy.

A number of CUI Specified categories are governed by laws with specific requirements and with higher penalties for failing to protect the information. We cannot exclude all of them from the definition of CUI, but we created the CUI Specified concept to reflect that these types of CUI have special requirements and should be differentiated from all other CUI.

The regulation already provides for the CUI EA to consult with industry and other private sector partners on CUI matters, at § 2002.8(a)(2), which says, "Consults with affected agencies, Government-wide policy bodies, State, local, tribal, and private sector partners, and representatives of the public on matters pertaining to CUI." However, we believe the comments are based in part on a misunderstanding of the CUI Registry, which already lists the categories and subcategories that constitute CUI. It is not an agency determination whether certain types of information qualify as CUI; the EA determines that a type of information qualifies as CUI when a law, regulation, or Government-wide policy requires that information's protection. That information is listed on the CUI Registry as a CUI category or subcategory and then qualifies as CUI for all agencies. Information, such as vendor proprietary information, that is not listed on the Registry does not qualify as CUI.

The authorities that establish CUI categories and subcategories were in existence before the CUI Program and this regulation, and this regulation does not change those already-existing requirements or any categories created subsequent to this rule's promulgation. Agencies and their contractors should already be complying with the authorities governing CUI. This rule gathers a majority of CUI under one set of consistent requirements (CUI Basic), and standardizes how agencies comply throughout the executive branch, both of which reduce the cost of complying with controlled information requirements. This structure, the CUI Registry, NIST standards, and oversight functions by the CUI EA are designed to restrain over-broad application of controls on information. In addition, the CUI EA is developing a Federal Acquisition Regulation (FAR) case through the normal FAR process, for agencies to use in contracts, which will further reduce chances of overreach. However, we have revised language throughout the regulation to strengthen the admonition against over-broad application and to better distinguish between CUI Basic and CUI Specified and the types of controls applied for each.

Additional comments recommended revisions to "misuse of CUI," "non-executive branch entity," and "unauthorized disclosure." We have accepted these comments and revised the definitions to address the concerns raised, with the exception of adding a separate definition for "contractors and vendors" because those entities are treated the same way as other non-executive branch entities. We declined to accept the suggestion that we remove the term "uncontrolled" from the definition "uncontrolled unclassified information." We understand the concern that the term seems to be the same as "unclassified information" so the addition of "uncontrolled" isn't necessary and could cause confusion. However, we added the 'uncontrolled' in response to comments from other agencies that 'unclassified information' in the context of CUI was confusing. Any information that is not classified information qualifies as 'unclassified' information. However, some unclassified information qualifies as controlled information under CUI and some does not. A piece of information might be classified and uncontrolled as CUI, unclassified but controlled as CUI, or unclassified and uncontrolled as CUI. This definition refers to only that last group, so it is necessary to label it in a way that identifies that it is both unclassified and uncontrolled.

Sec. 2002.4 Responsibilities (Now § 2002.8)

A few commenters suggested revisions to the EA responsibilities under § 2002.4(a) (now § 2002.8). These recommendations included adding responsibilities such as advising appropriate Federal officials who manage and monitor the application of the CUI Program in Federal contracts, continuously engaging with NIST to ensure standards applicable to contractors remain current and minimally burdensome, and maintaining the CUI Registry so it is current. Commenters also recommended adding a provision on the CUI Advisory Council under Subpart C; formally including a representative of the Federal contracting community as a member of the CUI Advisory Council, along with representatives of other non-executive branch entities; and adding a provision that, if the EA and an agency cannot reach agreement on agency policies, the issue can be raised through OMB to the President, if necessary.

We agree with the intent of the recommendations, and the CUI EA already consults with the suggested organizations (Federal contracting officials, NIST, etc.), but we decided to combine them into one reference. Therefore, we have revised § 2002.8(a)(2) to add "Government-wide policy bodies" to the list of organizations with which the CUI EA consults on CUI matters. We also revised § 2002.8(a)(8) to read, "Maintains and updates the CUI Registry as needed."

We also accepted the recommendation to address situations in which the EA and a party cannot resolve a dispute. This contingency is fully covered in the Order and is not limited to any specific area of CUI. Rather, it applies to any issue that arises with regard to implementing the Order. Section 2002.52, Dispute resolution, already sets out the resolution process when there are disputes and includes an agency's option to appeal through the Director of OMB, to the President. However, in light of this comment, we have revised 2002.52(g) to add a provision about how to proceed if there is a conflict with the EA.

We revised the language of § 2002.8(b)(2) to require agencies to include the CUI senior agency official in agency contact listings. The agency is tasked with designating both a CUI senior agency official and a CUI Program manager. Between them, these two roles oversee the agency's entire CUI planning and implementation program, including necessary training. Agencies have already been able and encouraged to designate these positions for more than a year, in part to enable them to plan ahead for necessary training so that it will occur in a timely manner.

Sec. 2002.10 CUI Registry, and 2002.11 (Now § 2002.12) CUI Categories and Subcategories

One commenter suggested that allowing the CUI Registry to be publicly accessible could compromise security by allowing others to know about handling procedures for protected information. Another felt that the CUI Registry should not be listed as the central repository for CUI information and guidance because they believe the Registry is currently an incomplete skeleton with no useful information. And a third comment raised a concern with § 2002.12's provision that agencies may not control any unclassified information outside the CUI Program, which might mean law enforcement agencies could be prevented from establishing basic dissemination controls on their law enforcement investigative information.

The CUI Advisory Council extensively discussed and deliberated about the potential security risk of a public CUI Registry, but decided that the current approach with the CUI Registry does not present such a risk. The CUI Registry does not set out the details of how agencies implement the prescribed CUI handling requirements. It instead points to the requirements (and permissible implementation options) that exist in governing authorities or standards publications. Most, if not all, of the information in the CUI Registry is already, or will be, publicly available through laws, regulations, Government-wide policies, NIST published standards, OMB memos, agency Web sites, Freedom of Information Act (FOIA) and similar requests, public contracts and the upcoming FAR case, agency policies implementing the CUI Program, and other similar sources.

While it is true that currently the CUI Registry is incomplete in a few areas, that will change once this CUI implementing regulation becomes effective. The CUI Registry will be the central repository, as described, and the place for agencies to find up-to-date information related to carrying out CUI requirements and implementing the CUI Program.

The provision in § 2002.12 is correct as drafted. As provided in the Order, and with limited exception, agencies may not control unclassified information except consistently with the CUI Program. A law enforcement agency may control dissemination of sensitive investigative information if a law, regulation, or Government-wide policy requires or permits controls on dissemination of that kind of information. If such authority exists, the information qualifies as CUI and the agency accordingly must (or may, if the authority permits discretion) implement controls on dissemination only to the extent and in the way required or permitted by the standards covering that kind of information. If an agency has sensitive investigative information that does not qualify as CUI—which means there is no law, regulation, or Government-wide policy that requires or permits controls on that information—then the agency cannot place controls on its dissemination. This is a question of whether the agency's authority to withhold the information is also reflected in laws, regulations, or Government-wide policies, not a question of the agency's substantive authorities or the CUI EA's authority. The EA's authority is to create a program that encompasses all the types of information a law, regulation, or Government-wide policy already requires or permits to be controlled and to establish a standardized way in which those controls are implemented across the executive branch. The CUI EA does not create the authority to control certain kinds of information; law, regulation, or Government-wide policy does.

### Sec. 2002.12 Safeguarding (Now § 2002.14)

Commenters requested clarification on whether CUI Basic is the minimum for handling CUI and on the minimum requirements for physically safeguarding CUI, including the definition of a controlled environment; suggested adding the word "timely" to § 2002.14(a)(1); recommended revising systems "authorized or accredited for classified information are also sufficient for safeguarding CUI" in § 2002.14(a)(3); and asked if the terms "CUI Basic" and "CUI Specified" are required in § 2002.14(b) since the regulation references NIST SPs 800–53 and 800–171.

We have revised the language in the § 2002.4 definition of CUI, CUI Basic, and CUI Specified to clarify the distinction between CUI Basic and CUI Specified, when the requirements of each apply, and whether agencies may apply more restrictive controls. We have also revised the language of § 2002.14(a)(1) to add in the word 'timely' as recommended.

We have also revised the language in 2002.4's definition of "controlled environment" as recommended. However, we decline to spell out specific detailed physical requirements beyond those already included in the regulation. Instead, we have set out in the CUI Registry the requirements for CUI Basic, while applicable laws, regulations, or Government-wide policies set out the requirements for CUI Specified.

Agencies have the discretion to choose different ways to meet the single physical barrier requirement to physically safeguard a given category or subcategory of CUI. The standard requires only that it be protected in a manner that minimizes the risk of unauthorized disclosure. In addition, another comment expressed concern about meeting the requirements for a controlled environment because many contractors have moved to open workstation environments and hoteling systems, where employees working on contracts for multiple agencies whose information must be protected are in the same space. This concern is likely due to a misunderstanding of what constitutes a controlled environment. To meet the requirement for a controlled environment, any separation from unauthorized people will suffice. In a cubicle situation with employees working on different contracts, each employee's cubicle would constitute a controlled environment for purposes of preventing visual access to the CUI as long as the CUI is under that employee's control. Such cases do not require additional construction for the visual aspect; the cubicle walls are sufficient. If an unauthorized person enters the cubicle, the authorized holder can close the CUI file or trigger a screen saver to block access to the CUI. If the authorized holder leaves their cubicle within an office environment where unauthorized people may also be working, they can appropriately secure the CUI within their cubicle, for example by placing it in a locked drawer or locking their computer screen so the information is not visible. However, discussions about CUI must also not be overheard by unauthorized people. Again, this does not require construction in open work environments or hoteling systems. For example, in hoteling environments separate rooms are still made available to employees for when "sensitive discussions" need to take place (performance appraisals, procurement or contracting discussions, medical-related discussions, etc). However, in other cases it might be appropriate for agencies to segregate some employee operation units from others and construction (more than a cubicle wall) could be necessary. The threshold is not burdensome, and permits agencies a variety of options by which to achieve it. The standard does not necessitate construction, although in some cases construction might be the way an agency achieves the controlled environment.

With regard to the question whether we need the CUI Basic and Specified concepts in the regulation if NIST SP 800–53 or 800–171 apply, we believe we do need those terms. The regulation explains the CUI Program and the structure that includes CUI Basic, CUI Specified, the CUI Registry, and categories and subcategories. These are terms that are part of the new CUI Program. The NIST publications set out standards and details for agencies to use when they are implementing certain information security controls, regardless of what type of information is involved. The CUI Program distinguishes between CUI Basic and CUI Specified, and informs agencies of what level of protection those kinds of information need. Agencies may then meet that requirement by implementing standards spelled out in the NIST publications.

We received five comments on § 2002.14(c) and (d). We have adopted the suggestion to include an overarching statement that an authorized holder must take reasonable precautions, and to include § 2002.14(c)(1)–(4) as examples of reasonable precautions, albeit required ones. In § 2002.14(c) and (d), we decline to change optional language into requirements. Some of these items are options agencies may use, and are not required. Not all agencies have the same resources or systems, so this section informs agencies of what they may do where there are options, what they must do when there are requirements, and encourages them to do some things that are not required (such as automated tracking systems), that may not be available in all cases but that aid in better securing the CUI.

In response to the question about intelligence information, this provision in the regulation relates to section 6(d) of the Order. Section 6(d) authorizes the Director of National Intelligence to issue policy directives and guidance necessary to implement the CUI Program for the intelligence community; it does not connect with CUI categories and subcategories. The Director of National Intelligence is, in this regard, functioning for the intelligence community in a role akin to an overarching agency head who may approve agency policies to implement the CUI Program within that "agency."

We received several comments on § 2002.14(e) and (f), about destroying and sanitizing CUI or equipment that contained CUI. Primarily, the suggestions were to make destroying and sanitizing methods and requirements optional, required only when practicable, or to allow alternative methods, although one comment requested that the regulation include a specific list of acceptable destruction methods. We decline these suggestions. However, due to the confusion that the comments indicated, we have revised the language on destroying CUI to more clearly articulate the required standard and the different sets of methods from which agencies may choose. The requirement is that agencies must destroy the CUI in a manner that renders it indecipherable, unreadable, and unrecoverable. Agencies must also follow any requirements for destroying CUI that are set out by laws, regulations, or Government-wide policies applicable to a given type of CUI. These are not optional or up to an agency's discretion.

However, agencies may, if no applicable authority sets out specific requirements for destroying the type of CUI involved, choose to destroy the CUI by methods contained in any of the standards cited in this subsection—those in NIST SP 800–88, those in NIST SP 800–53, or classified destruction methods. These documents are updated to be in accord with the most technologically acceptable means to render a broad range of media indecipherable, unreadable, and unrecoverable, based on its confidentiality level. These cited standards documents are sufficiently flexible to allow agencies a variety of methods for destroying CUI, while ensuring that agencies meet the underlying requirement to render the information indecipherable, unreadable, and unrecoverable.

A couple of commenters said that the rule seems to require the costly equipment needed to destroy classified information—such as equipment with memory wiping functions and designated shredders—or that agencies must destroy CUI using classified methods, particularly with regard to paper. However, this appears to be based on a misunderstanding of the provision. The required standard is to render the CUI indecipherable, unreadable, and unrecoverable. That standard does not require classified-level specialized equipment or methods required for destroying classified information, although agencies may use classified information methods if they choose. Due to issues in the past with information remaining on equipment such as copiers (which are usually leased and thus must be returned to vendors), most, if not all, agency contracts for copiers and other similar equipment that can save information on internal drives or other mechanisms must now include provisions for destroying those mechanisms or otherwise purging/sanitizing them of the information so the information is indecipherable, unreadable, and unrecoverable. That practice has become the norm for most agency equipment already, and does not require costly or specialized equipment that is required for classified information. It is also a reasonable practice to better safeguard CUI, so we decline to remove or make the indecipherable, unreadable, and unrecoverable requirement optional. The current language in the regulation provides agencies with options other than classified destruction methods. In addition to methods prescribed by any applicable law, regulation, or Government-wide policy that specifies a requirement for destroying a particular type of information, agencies may use methods in NIST SP 800–88 or methods in NIST SP 800–53. NIST SP 800–88 has clear guidance on destroying hard copy (paper and microfilms). The guidance sets out a specific particle size for cross-cut shredders, along with a particle size when an agency elects to pulverize or disintegrate paper.

The information systems requirements set out in § 2002.14(g) received a number of comments. The comments were primarily divided between concerns about application of NIST guidelines and standards, including to whom, how, and when they apply, and concerns about the moderate confidentiality impact value being applied to all CUI (some requesting that lower or higher values be allowed and others suggesting that agencies be permitted to make their own risk-based assessments on the level of protection). An additional comment recommended we clarify language in § 2002.14(g) from ‘‘existing’’ to ‘‘applicable’’ so that future laws and policies will be included. We have made this change to this provision and others within the regulation.

The purpose of the CUI Program is to provide a uniform and consistent system for protecting CUI throughout the executive branch. The baseline standard for protecting CUI Basic is moderate confidentiality. Given the need to protect CUI, a baseline of moderate confidentiality makes sense, because such protection is greater than low, the minimum requirement for all systems under the FISMA.

For situations in which agencies share CUI with non-executive branch entities that are not operating an information system on behalf of the agency, agencies should establish understandings and agreements with those entities prior to sharing CUI.

In accordance with the FISMA, *all agency heads* are responsible for ensuring the protection of Federal information and Federal information systems (‘‘information systems used or operated by an agency or by a contractor of an agency or other organization *on behalf of* an agency,’’ 44 U.S.C. 3554(a)(1)(A)(ii)).

The term ‘‘on behalf of’’ means when a non-executive branch entity uses or operates an information system or maintains or collects information for the purpose of processing, storing, or transmitting Federal information, and those activities are not incidental to providing a service or product to the Government. To protect such systems and information, agencies must prescribe appropriate security requirements and controls from FIPS Publication 200 and NIST SP 800–53 in accordance with any risk-based tailoring decisions they make.

When non-executive branch entities are not using or operating an information system or maintaining or collecting federal information ‘‘on behalf of’’ an agency, the agency must prescribe the requirements of NIST SP 800–171 in agreements to protect the confidentiality of the CUI, unless the agreement establishes higher security requirements.

A final comment on this section noted the statement in § 2002.14(g)(2) that, ‘‘Agencies may increase the confidentiality impact level above moderate and apply additional security requirements and controls only internally or by agreement between agencies; they may not require anyone outside the agency to use a higher impact level or more stringent security requirements and controls,’’ was unclear with regard to whether it applied to CUI Basic only or both CUI Basic and CUI Specified. We have revised the provision and the definitions of CUI Basic and Specified under § 2002.4 to clarify that the moderate confidentiality level applies to CUI Basic and is a baseline level; agencies must use no less than the moderate confidentiality level for CUI Basic, and may use the high level for CUI Basic within the agency or pursuant to agreements.

By contrast, CUI Specified information may be handled at higher confidentiality levels if the authorities establishing and governing the CUI Specified category or subcategory allow or require a higher confidentiality level or more specific or stringent controls. If they do not, then the no-less-than moderate confidentiality level established for CUI Basic applies to the

CUI Specified information as well. This also holds true for other controls—if the authorities specifying controls for a given type of CUI Specified are silent or do not set out a specific standard on any aspect of safeguarding or disseminating controls, the standards and the limited dissemination controls for CUI Basic apply to that aspect of handling the CUI Specified. CUI Basic standards, including no-less-than moderate confidentiality impact value, are the default standards for CUI in the absence of an appropriate authority and CUI Specified category or subcategory listed on the CUI Registry that specifies alternative standards.

### Sec. 2002.13 Accessing and Disseminating (Now § 2002.16)

Several comments on this section involved recommendations that we set out more specific criteria governing when agencies must permit access to CUI (some were concerned we would be permitting too much access and others were concerned agencies would unduly restrict access). Other commenters expressed concern or confusion about what constitutes a lawful Government purpose, similar concerns about whether it would be applied too strictly or too over-broadly, and concerns about whether an authorized holder could guarantee that dissemination would actually further the lawful Government purpose.

The rule does not require agencies to share CUI—the rule states that agencies "should" share CUI in certain circumstances, but recognizes agencies' broad discretion to determine whether or not to do so. Section 2002.16(a) also does not state that they should share it whenever there is a lawful Government purpose to do so and disregard all other considerations. The subsection states that agencies should share CUI if it furthers a lawful Government purpose to do so AND doing so abides by the requirements and policies contained in the authorities that established that information as CUI, and it is not otherwise prohibited by law, and the information is not restricted by an authorized limited dissemination control. One of the purposes of the CUI Program is to enable more sharing and access to protected information—when it is appropriate, given the need to protect that information to a particular degree or in particular ways—because in the past, much information that could be appropriately shared was not, due to overly applied restrictions (*see, e.g.,* Report and Recommendations of the Presidential Task Force on Controlled Unclassified Information (August 5, 2009), pp. 7–11)). The CUI Program does not give rise to situations in which a requesting agency must be given complete access to another agency's CUI just because the requestor can cite any lawful Government purpose. But if there is a lawful Government purpose and the other restrictions, considerations, and authorities do not prohibit it, then the purpose is to enable that sharing to occur.

However, as in most areas, the rule must balance between the goal of disseminating, the goal of uniform handling, the goal of protecting information as required, and the burden and cost of implementing the Program. One aspect of that balancing act is agency mission authority. Agency heads are granted by Congress the authority to manage their agencies and to take actions to carry out their missions within the scope of the various statutes giving rise to the mission. As a result, although we are working to implement a uniform system across agencies, and agencies are by and large in support of that goal, we must also still avoid establishing policies that could interfere with an agency head's authority to run the agency and carry out the mission.

Although NARA agrees with commenters that the absence of a firm across-the-board requirement to share CUI creates some potential for unclassified information to be "siloed" within agencies, we do not believe that such an across-the-board requirement would be consistent with our mandate under the Order, other agencies' statutory and other authorities and responsibilities, or the broad range of decisions that agencies face daily on whether and how to share information. Agencies have expressed concern about such an across-the-board requirement.

As a result, we changed the language from a requirement to disseminate CUI as the default state so long as a lawful government purpose exists, to an option. However, we have tried to keep the balance and to minimize unnecessarily restrictive policies and practices by setting out a framework of rules within which agencies may exercise their discretion, and by providing for CUI EA review of agency policies as a means by which to reduce chances of unnecessarily restrictive dissemination policies. The rule allows challenges to designation of information as CUI as another means of reducing the chance of unnecessarily restrictive policies. Although no procedure is ever implemented completely uniformly or consistently, this regulation establishes requirements that promote significantly greater consistency than already exists. In the long run, with additional guidance and oversight on the part of the CUI EA, as the CUI program develops, the Program will be able to bring about increasing uniformity in phases and some of the current balancing difficulties will evolve into practices that more completely fulfill the Program's goals.

The rule also does not require that an authorized holder must be able to guarantee that dissemination will actually further the lawful Government purpose. It is sufficient that the person disseminating it *believes* it furthers a lawful Government purpose.

With regard to a recommendation that we revise § 2002.16(a)(2) to limit when agencies may impose controls to restrict access to CUI, we have accepted the recommendation, but not the suggested language because it was too broad and could result in agency-by-agency decisions to apply controls based on their own risk tolerance, defeating the CUI Program's purpose of establishing a uniform system. The intent is for agencies to use controls only as necessary to abide by restrictions and none that are unlawful or improper. We have revised the language in 2002.16(a)(2) to more clearly reflect this and to address other concerns raised by the commenters. It now reads, "Agencies must impose controls judiciously and should do so only to apply necessary restrictions on access to CUI, including those required by law, regulation, or Government-wide policy."

We also accepted a recommendation to move § 2002.16(a)(4) to another section because it addresses non-executive branch entities, not agency tasks, which is the subject of the rest of paragraph (a). We have moved the provision to § 2002.16(b)(3) under controls on disseminating CUI.

We declined to accept suggestions that allow agencies to create their own limited dissemination controls, recommendations that we revise the access requirements to require compliance with Privacy Act, PII, and protected health disclosure requirements, and a suggestion that we point to the CNSSI 1253 Privacy Overlay. The purpose of the CUI Program is to establish a uniform set of requirements for how each type of CUI is handled by every agency. Agencies may not create their own exceptions to those requirements or grant themselves agency-specific restrictions on dissemination. The CUI EA has the sole authority to determine if a limited dissemination control might be appropriate within the larger framework of CUI and the Program's purpose to establish a uniform system. The regulation already states that dissemination and information sharing must be in accord with existing law, regulation, and Government-wide policy, so we decline to add a statement that it must be in accord with specific ones. However, the regulation also includes a section on CUI and the Privacy Act (2002.46), in which it spells out that the mere fact that information is marked CUI does not interfere with an agency making determinations about release of information protected by the Privacy Act; agencies must still abide by the Privacy Act requirements when making such determinations. The rule also includes a similar provision for FOIA, Whistleblower Protection Act, and other release authorities.

We also received several comments about § 2002.16(a)(6) (also connected with § 2002.1(e)) and the requirement to handle CUI in accord with the CUI Registry, especially when applied to contractors (as it could be through contract provisions), and a concern that contractors might receive improperly marked CUI. Compliance with the CUI Registry is woven as a requirement throughout the regulation, not just this section, as one commenter thought. The phrase "consistent with" or "complies with" and similar variations appears in several places with the phrase "the Order, this part, and the CUI Registry." Anyone who is authorized to handle CUI is responsible for doing so in compliance with the requirements of the Order, this regulation, and the CUI Registry. If a contractor receives improperly marked CUI from an agency, the contractor is not responsible for having marked the CUI improperly, but the contractor could be responsible for knowing the types of CUI it receives from the agency pursuant to the contract, and for knowing which CUI Registry category the information falls into, the handling requirements for that type of CUI, and so forth. As a result, the contractor could, in some cases, also be held responsible for properly handling the CUI even if it is not marked properly when they receive it.

In § 2002.1(e) of this rule, we explain that agencies extend the controls for handling CUI to contractors by means of contract provisions (including forthcoming new FAR case on CUI), which include the requirement to abide by the rule, the Order, and the CUI Registry and which also include other provisions relating to the CUI and its controls. In Subpart C of this rule, we include a section on challenges to CUI designation and have clarified that this includes a party's belief it has received improperly marked or unmarked CUI. In addition, under § 2002.8, agencies must establish a process for recipients of CUI to raise questions of improper or no CUI markings and receive directions from the agency on what to do with the information. In some cases, the agency may be contracting for services in which the contractor would mark and otherwise manage the CUI for the agency. In such cases, the contract would very likely include provisions in which the contractor is responsible for the burden of properly marking. In other cases, the agreement would not include that provision if the task was not part of the contract.

Additional comments on § 2002.16(a)(6) included a recommendation that we note that the authorities setting out misuse of CUI or penalties are provided as part of the CUI Registry, and another that recommended we remove the reporting requirement for any incident of non-compliance with handling requirements. We decline both suggestions. Governing laws, regulations, or Government-wide policies apply to CUI and to misuse of CUI as described with those authorities. This was true prior to the CUI Program's inception, and it remains true if those authorities are not listed on the CUI Registry. However, the regulation defines the CUI Registry as the repository for agencies to find information on handling CUI, and states that the CUI categories and subcategories, along with their governing authorities, are listed there. Agencies or entities that handle a given type of CUI should make themselves familiar with the contents of the governing authorities, and the requirements for that kind of CUI, including any provisions about misuse of the CUI. And, while we agree that the reporting requirement should be included in the FAR case that is being drafted, we disagree that it should be removed from the regulation. This reporting requirement applies to anyone who handles CUI, not just contractors. Other entities would not be subject to the FAR case, so this section makes clear that a provision for that purpose must be included in any agreement, including contracts but not limited to them. The FAR case is a tool to help agencies achieve that purpose in contracts in a uniform way, but it does not establish the requirement for agencies to include that provision in their agreements. This regulation does.

### Sec. 2002.14 Decontrolling (Now § 2002.18)

Several commenters asserted that, at times, decontrol is not optional, such as when the circumstances in law, regulation, or Government-wide policy that authorize information controls no longer apply to the information. We agree with these statements. While the rule requires agencies to actively manage decontrolling CUI as well as marking and handling it, and expects agencies to do so to the fullest extent they can, there are some circumstances in which they may not be able to take affirmative actions to decontrol information when it no longer qualifies as CUI. Some agencies have vast amounts of information stored in facilities or systems. In some situations, they may not have the resources to regularly sift through all of that information to determine which, if any, of it might no longer qualify as CUI. We have had to balance these competing concerns. However, this section did not clearly include automatic decontrol situations, so we have revised the language to clarify that in some circumstances, CUI may be decontrolled automatically, without review or an affirmative agency decision to decontrol the information. In such circumstances, the rule does not require agencies to take affirmative action to remove legacy markings from the information that no longer qualifies as CUI unless the agency re-uses, restates, paraphrases, releases, or donates that information.

One commenter requested that the section on removing decontrol statements be moved to § 2002.15 (now § 2002.20), under marking, as it seemed more appropriate there. We declined to do so, as we feel users will most easily find and apply all guidance on decontrol, including on removing decontrol markings, if it remains in the decontrol policy section.

One commenter requested clarification of the CUI Basic and Specified terms, in light of references made to NIST 800–53 and 800–171 guidance documents. We have revised the definitions of CUI Basic and CUI Specified in § 2002.2 (now § 2002.4), and the explanation of how they interact with NIST and FISMA requirements in § 2002.18(g), to better clarify the distinctions. The framework of CUI Basic and CUI Specified is part of the CUI Program; the NIST publications do not establish or describe it. Those publications already applied to agencies under the requirements of the FISMA before the CUI Program began, and they set out standards for information security of various types.

One commenter expressed concern about the provision prohibiting decontrol of CUI for the purpose of "mitigating" unauthorized disclosures. The commenter understood that this provision intended to prohibit the decontrol of CUI as a means of hiding unauthorized disclosures and avoiding accountability for them, but suggested clarifying language to avoid certain unintended consequences with the language as it was written. We have adopted the suggested revisions.

Sec. 2002.15 Marking (Now § 2002.20)

We received a number of comments regarding the old, or legacy, marking aspects of this section in § 2002.20(a) and (b). Although the comments addressed different specific concerns, a large number of them demonstrated an underlying confusion about when agencies must remove legacy markings, when they must apply the new CUI markings, and when waivers may apply. As a result, we have substantially revised these sections to clarify the relationship between CUI markings, legacy markings, and marking waivers. A related subject concerned confusion between one provision that required designating agencies to mark CUI when designating and another provision that required agencies to mark prior to disseminating.

The basic rule is that Agencies must mark all CUI with CUI markings and must also remove all legacy markings (markings from before the CUI Program and this regulation, including FOUO, SBU, OUO, etc.) from everything. Designating agencies must mark CUI at the time they designate the information as CUI. However, marking upon designation does not address when to mark legacy information that has already been designated in the past as one of various types of controlled information (now gathered under CUI). As a result, § 2002.20(a)(1) and (3) together explain that agencies must also mark legacy information with new CUI markings, if it qualifies as CUI. In situations in which an agency has a significantly large amount of legacy material, it may waive the requirement to re-mark each item, as long as the legacy material remains within the agency, but it must still protect the information by alternate means. In addition, it must re-mark any portion of the material as CUI, if it qualifies, when the agency re-uses or disseminates information from legacy material.

We also received a comment recommending that we adopt a 'not-required-to-mark' policy for all CUI; that agencies do not have to mark CUI, but if they do, they must use the markings set out in the Program rather than agency-specific markings. The interagency review process extensively discussed marking policy and the option of not requiring marking. The conclusion was that going with a 'not-required-to-mark' policy would result in failure to properly identify unclassified information requiring control and would subject employees, contractors, partners, and other recipients of CUI to an increased likelihood of sanctions for mishandling information that laws, regulations, or Government-wide policies require them to handle as CUI.

The marking policy for CUI is not complex, however. The CUI rule allows for a simple marking of "CUI" or "Controlled," if the CUI falls into a CUI Basic category or subcategory. The vast majority of CUI falls into CUI Basic categories and subcategories. As a result, this is the marking requirement for the vast majority of CUI. CUI Specified categories and subcategories incur additional marking requirements because they require controls that differ from all the other CUI, so the additional markings serve to identify that they are CUI Specified and what category or subcategory they belong to. As a result, authorized holders can tell at a glance that they have something that requires specific controls other than the default for CUI Basic, and what group the information falls into so they can determine what special handling that information requires. Most often, agencies that deal with CUI Specified information deal with it on a regular basis and are already intimately familiar with the requirements arising from law, regulation, or Government-wide policy for that type of information, since those requirements remain the same under this rule as in the past.

A number of comments on this section concerned waivers of the marking requirements (now re-located to their own section at § 2002.38). We recognize commenters' concerns that permitting waivers of the CUI marking requirements could affect the security of CUI and create confusion. We would prefer to keep the requirement absolute. However, some agencies already have internal storage and systems in which there is a substantial amount of information marked with legacy markings. In some cases, the number of items can be in the millions. Requiring the agency to re-mark all of that information with new CUI markings (which may also, if multiple types of legacy information are stored together, require them to go through each item to assess whether it qualifies as CUI, and which category or subcategory it falls into; not all information protected under various agency programs in the past qualifies as CUI or fits into the same groupings) may, in certain limited situations, be too burdensome for an agency's resources.

As a result, we have allowed agencies in these and similar rare circumstances to waive the requirement to re-mark that information with new CUI markings—but only as long as it remains within the agency's facilities or systems and as long as agency still safeguards the information to the required degree. However, when the agency disseminates a portion of that information outside the agency, or re-uses some of that information, it must remove legacy markings and mark that portion of the information with correct CUI markings. In § 2002.20(b)(7), the rule also requires agencies to document the waivers they implement and report them to the CUI EA. In this way, the CUI EA monitors implementation of the waiver option, may take steps to ensure waivers do not swallow the rule, and ascertains that the agencies are implementing other safeguarding practices so the protected information is not endangered.

Other comments addressed failure to mark CUI, or improperly marked CUI, and concerns that non-executive branch entities would not know that the information was CUI and would either be penalized or would have to assume a burden of control to oversee CUI marking in some manner. The requests included exempting non-executive branch entities from requirements to properly handle CUI if it isn't marked or marked properly, and creating a FAR case to address the issue. The comments raise a reasonable concern. However, we cannot exempt non-executive branch entities from the requirements to protect CUI, for the reasons explained in the beginning of the general comments discussion. The regulation does contemplate the possibility that some CUI may be unmarked or marked improperly. In such cases, agencies and non-executive branch agencies would still be subject to that CUI's governing law, regulation, or Government-wide policy's requirements, including any penalties or sanctions for not handling it properly in accord with those authorities or the connected CUI Program requirements. Entities that receive CUI from an agency should normally be on notice that they will be receiving that type of CUI information, pursuant to the terms of any contract or agreement between the two. As a result, if some of that information is not properly marked for some reason, the recipient entity should be aware that they receive certain types of CUI from the agency; the information is CUI; it falls within the agreed-upon type of CUI; and it is subject to the same handling requirements.

However, we have included in § 2002.8(c)(8) a requirement that agencies must establish a process to accept and manage challenges to CUI status (including improper or no marking). 2002.20(m)(2) also requires agencies to establish a mechanism by which authorized holders can contact an agency representative for instructions when they receive unmarked or improperly marked information that the agency designated as CUI. We have also revised § 2002.50, Challenges to designation of information as CUI, subsection (a), to allow CUI authorized holders who believe they have received unmarked CUI to notify the designating agency of this belief through the challenge process. These provisions establish methods for reporting the improper marking or lack of marking, and will trigger the challenge process so that the situation is addressed. Misuse of CUI, as described in the definition in § 2002.4, may include no or improper marking, and subsection 2002.52 requires agencies to establish processes for reporting and investigating misuse of CUI, and requires them to report misuse of CUI to the CUI EA. This ensures agencies will look into causes of improper or lack of marking so that the causes can be addressed, and that the CUI EA can monitor trends like frequency, appropriate handling, recurring causes, etc., and determine if there is a systemic issue.

Other comments recommended including specific procedures in the rule for vetting or challenging CUI markings, allowing agencies to establish their own marking requirements, and clarifying whether agencies should mark CUI in accord with the CUI Registry or the regulation. Some commenters expressed concern that current marking technology would work for new CUI markings, and others requested we add an explanation of how markings for other types of data, such as ITAR- and EAR-controlled technical data, "sensitive but unclassified," and "for official use only (FOUO)," will co-exist with the CUI Program. One comment requested an explanation of the status of information derived from CUI, and another suggested we add a requirement to mark the designating and disseminating agencies on all CUI.

There are competing interests inherent within the CUI Program—full consistency and uniformity vs. cost and burden. This rule attempts to balance these competing interests, and we engaged in extensive discussions with Federal agencies, state, local, and tribal groups, industry, and public interest groups as part of that balancing effort. The marking requirements were developed in consultation with the CUI Advisory Council, which gave serious consideration to the costs of implementing them. However, the marking requirements are necessary to ensure uniform handling across agencies and accomplish the goals of the Program. Agencies or others may incur costs for purchasing new marking tools, if new ones are necessary to implement the marking requirements. However, most information that requires control is already being marked in some manner, so in most cases, it would be a matter of aligning those tools with this policy.

The CUI Advisory Council considered a number of the same issues and concerns about over-broad marking as commenters raised, and determined that the kinds of suggested review procedures and practices were too onerous or were not in keeping with goals of the Program. However, there are some controls built into the program's structure. The CUI EA determines which information belongs in which categories and subcategories, whether those groupings are CUI Basic or CUI Specified, and articulates which controls or controlling authorities apply. This limits the kinds of information agencies can designate as CUI to only those vetted through that process and listed on the Registry. One set of uniform handling requirements applies to all CUI that falls into the CUI Basic category. This means that all agencies must use the same handling requirements for the vast majority of CUI, including marking. Individual agencies won't be able to establish special marking for information, so that should also help minimize over-broad marking. In addition, agencies must establish a mechanism for challenges to information they designate as CUI, so if someone believes the agency is marking over-broadly, they can raise the issue through the challenge process for scrutiny. They may make these challenges anonymously, so should not be discouraged from raising concerns. These structural elements, and other facets of the Program's structure, including CUI EA oversight of agency implementation and the ability to pursue challenges with the EA and above if not resolved at the agency level, address many of the commenters' concerns about over-broad marking and are designed in part to restrict agencies from over-broadly applying any CUI controls and policies.

The CUI EA mandates marking requirements, but agency policy implements those requirements within the agency. Agency policies that implement CUI can spell out detailed procedures when needed. However, the regulation must apply to a broad spectrum of agencies with different structures, staffing, and sizes, among other differences. As a result, detailed processes are better managed at the agency level, as long as they comply with the CUI Program's requirements and policies. In response to one commenter's suggestion that we add provisions on decontrol to the marking section, the regulation already contains a full section on decontrol of CUI and for unmarking it once it is decontrolled. We believe that marking aspects of decontrol are best addressed within the decontrol section so that all decontrol policies are easy to find in one place.

The CUI Program markings will replace other designations, such as SBU, FOUO, and OUO, and any agency-specific labels for CUI, which will all be discontinued. As a result, concerns about how they will integrate are moot. Some CUI qualifies as CUI Specified (such as export controlled information and confidential statistical information under the Confidential Information Protection and Statistical Efficiency Act) due to the existing statutory regime already established for controlling that type of information. While some types of CUI Specified may arise primarily in only one or a couple of agencies, those types of CUI do not become agency-specific types of CUI simply for that reason. The categories or subcategories for those types of CUI Specified have gone through CUI EA vetting, have underlying laws, regulations, or Government-wide policies establishing them, are listed on the CUI Registry, and include specified controls that apply uniformly throughout the executive branch, to any agency that has that type of information. This is different from an agency developing its own category of protected information, or its own policy or practice for handling protected information, such as the various SBU and FOUO regimes that currently exist from agency to agency.

Regarding the questions about derived CUI, the bottom line is that certain types of information qualify as CUI. If an item of information qualifies as CUI, it doesn't matter whether it is in some way also derived from another item of information that qualifies as CUI, and it should be marked as CUI either way. Its status as CUI depends upon the information itself and whether it meets the requirements in a law, regulation, or Government-wide policy that establish it as needing controls on safeguarding or disseminating. A document containing CUI that is derived from another document that contains CUI would also be CUI—because it contains controlled information, not simply because it is derived from a document that contains CUI. It is possible the original document contains both CUI and non-CUI and the derived document could therefore contain only information derived from the non-CUI portions of the original document. In such a case, the derived document would not become CUI simply because the information was derived from a CUI document.

The fact that a certain item of CUI derives from another item of CUI becomes relevant primarily in the context of marking waivers for legacy CUI. This is because the rule states that an agency's waiver, for re-marking as CUI certain items of legacy information, ceases for one or more of those items when the agency re-uses them. So, if an agency is not re-marking certain legacy CUI because that CUI is under a marking waiver, and it then uses in another item some controlled information from within that legacy CUI—*i.e.* it derives CUI from the legacy item—then the new item containing the derived CUI does not fall under the waiver (even though the originating legacy CUI item does) and the agency must properly mark the derived item as CUI. A similar requirement would apply to CUI derived from an unmarked or improperly marked item of CUI as well, although in that case the original item should then be properly marked as well once it is clear it contains CUI.

With regard to suggestions that we add marking requirements for designating and disseminating agency information and dates, the regulation already includes a provision within § 2002.20 that requires marking the designating agency. We do not see a reason to add an extra marking for the disseminating agency. Likewise, we decline to require a date marking on all CUI, as another commenter suggested. This was previously discussed during the inter-agency development process, but not adopted. Practically speaking, much CUI will have a date apparent, though it is not required. However, there is no required decontrol time period, so this issue is much different in a CUI context than the need for a date within a classified information context.

### Sec. 2002.16 Waivers of CUI Requirements in Exigent Circumstances (Now Part of § 2002.38)

Several commenters recommended that we add a provision requiring agencies to report any waivers to the CUI EA, both when the agency issues the waiver and when it rescinds it. We agree, and revised the section to require CUI senior agency officials to retain records on each waiver and use them to report the waivers to the CUI EA.

Another commenter expressed concern that waivers could be used over-broadly to avoid complying with CUI requirements and suggested we add a provision that limits waivers to the shortest period and narrowest scope necessary to account for the exigent circumstances. The comment also expressed concern that waivers could not accord with prescriptive language in 2002.12 CUI categories and subcategories. We accepted the idea of language limiting the waivers and revised the section to require agencies to reinstitute CUI requirements for all CUI covered by the waiver without delay when circumstances requiring the waiver end. However, we disagree that this section generally conflicts with the requirements of 2002.12 CUI categories and subcategories.

### Sec. 2002.27 CUI and Information Disclosure Requests (Now § 2002.44)

One commenter questioned whether a CUI designation really has "no bearing" on decisions to release or not to release information in response to a FOIA request. The Order explicitly states that the mere fact that an item is CUI has no bearing on disclosure determinations under release statutes such as FOIA. Agencies make determinations about whether to release, or to exempt from release, under the FOIA solely on the basis of FOIA criteria and considerations. This rule, or the fact that something is CUI, does not change the basis upon which agencies must make FOIA determinations.

Agencies may determine that certain documents are exempt from release under FOIA that also qualify and are marked as CUI, but the CUI status does not cause or influence that determination. The FOIA allows Federal agencies to withhold information prohibited from disclosure by another Federal statute pursuant to exemption 3 in the FOIA (5 U.S.C. 552(b)(3)). In some cases, a given item of information may qualify as CUI on the basis of one of those same Federal statutes. However, the decision whether to release or withhold such information in response to a FOIA request would still be based on the requirements under which the FOIA exemption 3 may apply, rather than its status as CUI. Based on the comment, we have revised 2002.44 to better clarify this.

### Sec. 2002.22 Challenges to Designation of Information as CUI (Now § 2002.50)

One commenter requested that we revise this section to include challenges about improperly marked or unmarked CUI and challenges to waivers. The commenter also sought clarification regarding whether the challenge procedures are available to recipients outside of the Government. We have revised this section to clarify that all authorized holders, whether within or outside of the Government, may challenge CUI designations, and to reflect that they may bring a challenge because they believe CUI is improperly marked or unmarked.

### Conclusion

We have thoroughly and carefully considered all the comments and have attempted to clearly explain in this supplementary information section some of our reasoning and changes to the regulation since it was proposed, in hopes of better conveying the scope and nature of the CUI Program and its requirements to those who had questions or concerns. We appreciate the comments and the effort individuals and organizations made to craft them and to think about the CUI Program and the implications of the regulation's provisions. The comments helped us refine the rule into a much better regulation and one that more clearly explains the Program and its requirements. We realize any new program brings change, and that those changes can be confusing, can seem inconsistent or incompletely thought out, and can appear to be hugely burdensome or unnecessarily complicated at first encounter. We hope that we have alleviated much of those concerns by our responses to these comments and the changes to the regulation. However, if you have additional questions or would like more information, please visit our CUI Web site at *http://www.archives.gov/cui/* or contact us directly.

We have had to make compromises to the goal of complete or absolute uniformity in deference to the need to balance between several competing, legitimate interests and to develop a Program and requirements that can work for a variety of agencies and types of information, as well as those who receive CUI from agencies. However, we believe strongly that, in the course of those efforts and all the input, discussions, comments, and work contributed by our partners on the CUI Advisory Council and at NIST, agency and industry experts who generously consulted with us, and the many industry, business, organizational, and individual reviewers, we have been able to develop a sound CUI Program that significantly increases uniformity throughout the executive branch, appropriately protects CUI while encouraging sharing and access when appropriate, and does so with the least amount of burden, complexity, and change possible.

### List of Subjects in 32 CFR Part 2002

Administrative practice and procedure, Archives and records, Controlled unclassified information, Freedom of information, Government in the Sunshine Act, Incorporation by reference, Information, Information security, National security information, Open government, Privacy.

For the reasons stated in the preamble, NARA amends 32 CFR Chapter XX by adding part 2002 to read as follows:

## PART 2002—CONTROLLED UNCLASSIFIED INFORMATION (CUI)

### Subpart A—General Information

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2002.1 Purpose and scope.
2002.2 Incorporation by reference.
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### Subpart B—Key Elements of the CUI Program

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2002.34 Transferring records.
2002.36 Legacy materials.
2002.38 Waivers of CUI requirements.
2002.44 CUI and disclosure statutes.
2002.46 CUI and the Privacy Act.
2002.48 CUI and the Administrative Procedure Act (APA).
2002.50 Challenges to designation of information as CUI.
2002.52 Dispute resolution for agencies.
2002.54 Misuse of CUI.
2002.56 Sanctions for misuse of CUI.

### Appendix A to Part 2002—Acronyms

**Authority:** E.O. 13556, 75 FR 68675, 3 CFR, 2010 Comp., pp. 267–270.

### Subpart A—General Information

#### § 2002.1 Purpose and scope.

(a) This part describes the executive branch's Controlled Unclassified Information (CUI) Program (the CUI Program) and establishes policy for designating, handling, and decontrolling information that qualifies as CUI.

(b) The CUI Program standardizes the way the executive branch handles information that requires protection under laws, regulations, or Government-wide policies, but that does not qualify as classified under Executive Order 13526, Classified National Security Information, December 29, 2009 (3 CFR, 2010 Comp., p. 298), or any predecessor or successor order, or the Atomic Energy Act of 1954 (42 U.S.C. 2011, *et seq.*), as amended.

(c) All unclassified information throughout the executive branch that requires any safeguarding or dissemination control is CUI. Law, regulation (to include this part), or Government-wide policy must require or permit such controls. Agencies therefore may not implement safeguarding or dissemination controls for any unclassified information other than those controls consistent with the CUI Program.

(d) Prior to the CUI Program, agencies often employed *ad hoc,* agency-specific policies, procedures, and markings to handle this information. This patchwork approach caused agencies to mark and handle information inconsistently, implement unclear or unnecessarily restrictive disseminating policies, and create obstacles to sharing information.

(e) An executive branch-wide CUI policy balances the need to safeguard CUI with the public interest in sharing information appropriately and without unnecessary burdens.

(f) This part applies to all executive branch agencies that designate or handle information that meets the standards for CUI. This part does not apply directly to non-executive branch entities, but it does apply indirectly to non-executive branch CUI recipients, through incorporation into agreements (see §§ 2002.4(c) and 2002.16(a) for more information).

(g) This part rescinds Controlled Unclassified Information (CUI) Office Notice 2011–01: Initial Implementation Guidance for Executive Order 13556 (June 9, 2011).

(h) This part creates no right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(i) This part, which contains the CUI Executive Agent (EA)'s control policy, overrides agency-specific or *ad hoc* requirements when they conflict. This part does not alter, limit, or supersede a requirement stated in laws, regulations, or Government-wide policies or impede the statutory authority of agency heads.

#### § 2002.2 Incorporation by reference.

(a) NARA incorporates certain material by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NARA must publish notice of change in the **Federal Register** and the material must be available to the public. You may inspect all approved material incorporated by reference at NARA's textual research room, located at National Archives and Records Administration; 8601 Adelphi Road; Room 2000; College Park, MD 20740–6001. To arrange to inspect this approved material at NARA, contact NARA's Regulation Comments Desk (Strategy and Performance Division (SP)) by email at *regulation_comments@nara.gov* or by telephone at 301.837.3151. All approved material is available from the sources listed below. You may also inspect approved material at the Office of the Federal Register (OFR). For information on the availability of this material at the OFR, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) The National Institute of Standards and Technology (NIST), by mail at 100 Bureau Drive, Stop 1070; Gaithersburg, MD 20899–1070, by email at *inquiries@nist.gov,* by phone at (301) 975–NIST (6478) or Federal Relay Service (800) 877–8339 (TTY), or online at *http://nist.gov/publication-portal.cfm.*

(1) FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems, February 2004. IBR approved for §§ 2002.14(c) and (g), and 2002.16(c).

(2) FIPS PUB 200, Minimum Security Requirements for Federal Information and Information Systems, March 2006. IBR approved for §§ 2002.14(c) and (g), and 2002.16(c).

(3) NIST Special Publication 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, Revision 4, April 2013 (includes updates as of 01–22–2015), (NIST SP 800–53). IBR approved for §§ 2002.14(c), (e), (f), and (g), and 2002.16(c).

(4) NIST Special Publication 800–88, Guidelines for Media Sanitization, Revision 1, December 2014, (NIST SP 800–88). IBR approved for § 2002.14(f).

(5) NIST Special Publication 800–171, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations, June 2015 (includes updates as of January 14, 2016), (NIST SP 800–171). IBR approved for § 2002.14(h).

#### § 2002.4 Definitions.

As used in this part:

(a) *Agency* (also Federal agency, executive agency, executive branch agency) is any "executive agency," as defined in 5 U.S.C. 105; the United States Postal Service; and any other independent entity within the executive branch that designates or handles CUI.

(b) *Agency CUI policies* are the policies the agency enacts to implement the CUI Program within the agency. They must be in accordance with the Order, this part, and the CUI Registry and approved by the CUI EA.

(c) *Agreements and arrangements* are any vehicle that sets out specific CUI handling requirements for contractors and other information-sharing partners when the arrangement with the other party involves CUI. Agreements and arrangements include, but are not limited to, contracts, grants, licenses, certificates, memoranda of agreement/arrangement or understanding, and information-sharing agreements or arrangements. When disseminating or sharing CUI with non-executive branch entities, agencies should enter into written agreements or arrangements that include CUI provisions whenever feasible (see § 2002.16(a)(5) and (6) for details). When sharing information with foreign entities, agencies should enter agreements or arrangements when feasible (see § 2002.16(a)(5)(iii) and (a)(6) for details).

(d) *Authorized holder* is an individual, agency, organization, or group of users that is permitted to designate or handle CUI, in accordance with this part.

(e) *Classified information* is information that Executive Order 13526, "Classified National Security Information," December 29, 2009 (3 CFR, 2010 Comp., p. 298), or any predecessor or successor order, or the Atomic Energy Act of 1954, as amended, requires agencies to mark with classified markings and protect against unauthorized disclosure.

(f) *Controlled environment* is any area or space an authorized holder deems to have adequate physical or procedural controls (*e.g.,* barriers or managed access controls) to protect CUI from unauthorized access or disclosure.

(g) *Control level* is a general term that indicates the safeguarding and disseminating requirements associated with CUI Basic and CUI Specified.

(h) *Controlled Unclassified Information* (CUI) is information the Government creates or possesses, or that an entity creates or possesses for or on behalf of the Government, that a law, regulation, or Government-wide policy requires or permits an agency to handle using safeguarding or dissemination controls. However, CUI does not include classified information (see paragraph (e) of this section) or information a non-executive branch entity possesses and maintains in its own systems that did not come from, or was not created or possessed by or for, an executive branch agency or an entity acting for an agency. Law, regulation, or Government-wide policy may require or permit safeguarding or dissemination controls in three ways: Requiring or permitting agencies to control or protect the information but providing no specific controls, which makes the information CUI Basic; requiring or permitting agencies to control or protect the information and providing specific controls for doing so, which makes the information CUI Specified; or requiring or permitting agencies to control the information and specifying only some of those controls, which makes the information CUI Specified, but with CUI Basic controls where the authority does not specify.

(i) *Controls* are safeguarding or dissemination controls that a law, regulation, or Government-wide policy requires or permits agencies to use when handling CUI. The authority may specify the controls it requires or permits the agency to apply, or the authority may generally require or permit agencies to control the information (in which case, the agency applies controls from the Order, this part, and the CUI Registry).

(j) *CUI Basic* is the subset of CUI for which the authorizing law, regulation, or Government-wide policy does not set out specific handling or dissemination controls. Agencies handle CUI Basic according to the uniform set of controls set forth in this part and the CUI Registry. CUI Basic differs from CUI Specified (see definition for CUI Specified in this section), and CUI Basic controls apply whenever CUI Specified ones do not cover the involved CUI.

(k) *CUI categories and subcategories* are those types of information for which laws, regulations, or Government-wide policies require or permit agencies to exercise safeguarding or dissemination controls, and which the CUI EA has approved and listed in the CUI Registry. The controls for any CUI Basic categories and any CUI Basic subcategories are the same, but the controls for CUI Specified categories and subcategories can differ from CUI Basic ones and from each other. A CUI category may be Specified, while some or all of its subcategories may not be, and vice versa. If dealing with CUI that falls into a CUI Specified category or subcategory, review the controls for that category or subcategory on the CUI Registry. Also consult the agency's CUI policy for specific direction from the Senior Agency Official.

(l) *CUI category or subcategory markings* are the markings approved by the CUI EA for the categories and subcategories listed in the CUI Registry.

(m) *CUI Executive Agent (EA)* is the National Archives and Records Administration (NARA), which implements the executive branch-wide CUI Program and oversees Federal agency actions to comply with the Order. NARA has delegated this authority to the Director of the Information Security Oversight Office (ISOO).

(n) *CUI Program* is the executive branch-wide program to standardize CUI handling by all Federal agencies. The Program includes the rules, organization, and procedures for CUI, established by the Order, this part, and the CUI Registry.

(o) *CUI Program manager* is an agency official, designated by the agency head or CUI SAO, to serve as the official representative to the CUI EA on the agency's day-to-day CUI Program operations, both within the agency and in interagency contexts.

(p) *CUI Registry* is the online repository for all information, guidance, policy, and requirements on handling CUI, including everything issued by the CUI EA other than this part. Among other information, the CUI Registry identifies all approved CUI categories and subcategories, provides general descriptions for each, identifies the basis for controls, establishes markings, and includes guidance on handling procedures.

(q) *CUI senior agency official (SAO)* is a senior official designated in writing by an agency head and responsible to that agency head for implementation of the CUI Program within that agency. The CUI SAO is the primary point of contact for official correspondence, accountability reporting, and other matters of record between the agency and the CUI EA.

(r) *CUI Specified* is the subset of CUI in which the authorizing law, regulation, or Government-wide policy contains specific handling controls that it requires or permits agencies to use that differ from those for CUI Basic. The CUI Registry indicates which laws, regulations, and Government-wide policies include such specific requirements. CUI Specified controls may be more stringent than, or may simply differ from, those required by CUI Basic; the distinction is that the underlying authority spells out specific controls for CUI Specified information and does not for CUI Basic information. CUI Basic controls apply to those aspects of CUI Specified where the authorizing laws, regulations, and

Government-wide policies do not provide specific guidance.

(s) *Decontrolling* occurs when an authorized holder, consistent with this part and the CUI Registry, removes safeguarding or dissemination controls from CUI that no longer requires such controls. Decontrol may occur automatically or through agency action. See § 2002.18.

(t) *Designating CUI* occurs when an authorized holder, consistent with this part and the CUI Registry, determines that a specific item of information falls into a CUI category or subcategory. The authorized holder who designates the CUI must make recipients aware of the information's CUI status in accordance with this part.

(u) *Designating agency* is the executive branch agency that designates or approves the designation of a specific item of information as CUI.

(v) *Disseminating* occurs when authorized holders provide access, transmit, or transfer CUI to other authorized holders through any means, whether internal or external to an agency.

(w) *Document* means any tangible thing which constitutes or contains information, and means the original and any copies (whether different from the originals because of notes made on such copies or otherwise) of all writings of every kind and description over which an agency has authority, whether inscribed by hand or by mechanical, facsimile, electronic, magnetic, microfilm, photographic, or other means, as well as phonic or visual reproductions or oral statements, conversations, or events, and including, but not limited to: Correspondence, email, notes, reports, papers, files, manuals, books, pamphlets, periodicals, letters, memoranda, notations, messages, telegrams, cables, facsimiles, records, studies, working papers, accounting papers, contracts, licenses, certificates, grants, agreements, computer disks, computer tapes, telephone logs, computer mail, computer printouts, worksheets, sent or received communications of any kind, teletype messages, agreements, diary entries, calendars and journals, printouts, drafts, tables, compilations, tabulations, recommendations, accounts, work papers, summaries, address books, other records and recordings or transcriptions of conferences, meetings, visits, interviews, discussions, or telephone conversations, charts, graphs, indexes, tapes, minutes, contracts, leases, invoices, records of purchase or sale correspondence, electronic or other transcription of taping of personal conversations or conferences, and any written, printed, typed, punched, taped, filmed, or graphic matter however produced or reproduced. Document also includes the file, folder, exhibits, and containers, the labels on them, and any metadata, associated with each original or copy. Document also includes voice records, film, tapes, video tapes, email, personal computer files, electronic matter, and other data compilations from which information can be obtained, including materials used in data processing.

(x) *Federal information system* is an information system used or operated by an agency or by a contractor of an agency or other organization *on behalf of an agency*. 44 U.S.C. 3554(a)(1)(A)(ii).

(y) *Foreign entity* is a foreign government, an international organization of governments or any element thereof, an international or foreign public or judicial body, or an international or foreign private or non-governmental organization.

(z) *Formerly Restricted Data (FRD)* is a type of information classified under the Atomic Energy Act, and defined in 10 CFR 1045, Nuclear Classification and Declassification.

(aa) *Handling* is any use of CUI, including but not limited to marking, safeguarding, transporting, disseminating, re-using, and disposing of the information.

(bb) *Lawful Government purpose* is any activity, mission, function, operation, or endeavor that the U.S. Government authorizes or recognizes as within the scope of its legal authorities or the legal authorities of non-executive branch entities (such as state and local law enforcement).

(cc) *Legacy material* is unclassified information that an agency marked as restricted from access or dissemination in some way, or otherwise controlled, prior to the CUI Program.

(dd) *Limited dissemination control* is any CUI EA-approved control that agencies may use to limit or specify CUI dissemination.

(ee) *Misuse of CUI* occurs when someone uses CUI in a manner not in accordance with the policy contained in the Order, this part, the CUI Registry, agency CUI policy, or the applicable laws, regulations, and Government-wide policies that govern the affected information. This may include intentional violations or unintentional errors in safeguarding or disseminating CUI. This may also include designating or marking information as CUI when it does not qualify as CUI.

(ff) *National Security System* is a special type of information system (including telecommunications systems) whose function, operation, or use is defined in National Security Directive 42 and 44 U.S.C. 3542(b)(2).

(gg) *Non-executive branch entity* is a person or organization established, operated, and controlled by individual(s) acting outside the scope of any official capacity as officers, employees, or agents of the executive branch of the Federal Government. Such entities may include: Elements of the legislative or judicial branches of the Federal Government; state, interstate, tribal, or local government elements; and private organizations. Non-executive branch entity does not include foreign entities as defined in this part, nor does it include individuals or organizations when they receive CUI information pursuant to federal disclosure laws, including the Freedom of Information Act (FOIA) and the Privacy Act of 1974.

(hh) *On behalf of an agency* occurs when a non-executive branch entity uses or operates an information system or maintains or collects information for the purpose of processing, storing, or transmitting Federal information, and those activities are not incidental to providing a service or product to the Government.

(ii) *Order* is Executive Order 13556, Controlled Unclassified Information, November 4, 2010 (3 CFR, 2011 Comp., p. 267), or any successor order.

(jj) *Portion* is ordinarily a section within a document, and may include subjects, titles, graphics, tables, charts, bullet statements, sub-paragraphs, bullets points, or other sections.

(kk) *Protection* includes all controls an agency applies or must apply when handling information that qualifies as CUI.

(ll) *Public release* occurs when the agency that originally designated particular information as CUI makes that information available to the public through the agency's official public release processes. Disseminating CUI to non-executive branch entities as authorized does not constitute public release. Releasing information to an individual pursuant to the Privacy Act of 1974 or disclosing it in response to a FOIA request also does not automatically constitute public release, although it may if that agency ties such actions to its official public release processes. Even though an agency may disclose some CUI to a member of the public, the Government must still control that CUI unless the agency publicly releases it through its official public release processes.

(mm) *Records* are agency records and Presidential papers or Presidential records (or Vice-Presidential), as those terms are defined in 44 U.S.C. 3301 and 44 U.S.C. 2201 and 2207. Records also include such items created or maintained by a Government contractor, licensee, certificate holder, or grantee that are subject to the sponsoring agency's control under the terms of the entity's agreement with the agency.

(nn) *Required or permitted (by a law, regulation, or Government-wide policy)* is the basis by which information may qualify as CUI. If a law, regulation, or Government-wide policy requires that agencies exercise safeguarding or dissemination controls over certain information, or specifically permits agencies the discretion to do so, then that information qualifies as CUI. The term 'specifically permits' in this context can include language such as "is exempt from" applying certain information release or disclosure requirements, "may" release or disclose the information, "may not be required to" release or disclose the information, "is responsible for protecting" the information, and similar specific but indirect, forms of granting the agency discretion regarding safeguarding or dissemination controls. This does not include general agency or agency head authority and discretion to make decisions, risk-assessments, or other broad agency authorities, discretions, and powers, regardless of the source. The CUI Registry reflects all appropriate authorizing authorities.

(oo) *Restricted Data (RD)* is a type of information classified under the Atomic Energy Act, defined in 10 CFR part 1045, Nuclear Classification and Declassification.

(pp) *Re-use* means incorporating, restating, or paraphrasing information from its originally designated form into a newly created document.

(qq) *Self-inspection* is an agency's internally managed review and evaluation of its activities to implement the CUI Program.

(rr) *Unauthorized disclosure* occurs when an authorized holder of CUI intentionally or unintentionally discloses CUI without a lawful Government purpose, in violation of restrictions imposed by safeguarding or dissemination controls, or contrary to limited dissemination controls.

(ss) *Uncontrolled unclassified information* is information that neither the Order nor the authorities governing classified information cover as protected. Although this information is not controlled or classified, agencies must still handle it in accordance with Federal Information Security Modernization Act (FISMA) requirements.

(tt) *Working papers* are documents or materials, regardless of form, that an agency or user expects to revise prior to creating a finished product.

### § 2002.6 CUI Executive Agent (EA).

(a) Section 2(c) of the Order designates NARA as the CUI Executive Agent (EA) to implement the Order and to oversee agency efforts to comply with the Order, this part, and the CUI Registry.

(b) NARA has delegated the CUI EA responsibilities to the Director of ISOO. Under this authority, ISOO staff carry out CUI oversight responsibilities and manage the Federal CUI program.

### § 2002.8 Roles and responsibilities.

(a) The CUI EA:

(1) Develops and issues policy, guidance, and other materials, as needed, to implement the Order, the CUI Registry, and this part, and to establish and maintain the CUI Program;

(2) Consults with affected agencies, Government-wide policy bodies, State, local, Tribal, and private sector partners, and representatives of the public on matters pertaining to CUI as needed;

(3) Establishes, convenes, and chairs the CUI Advisory Council (the Council) to address matters pertaining to the CUI Program. The CUI EA consults with affected agencies to develop and document the Council's structure and procedures, and submits the details to OMB for approval;

(4) Reviews and approves agency policies implementing this part to ensure their consistency with the Order, this part, and the CUI Registry;

(5) Reviews, evaluates, and oversees agencies' actions to implement the CUI Program, to ensure compliance with the Order, this part, and the CUI Registry;

(6) Establishes a management and planning framework, including associated deadlines for phased implementation, based on agency compliance plans submitted pursuant to section 5(b) of the Order, and in consultation with affected agencies and OMB;

(7) Approves categories and subcategories of CUI as needed and publishes them in the CUI Registry;

(8) Maintains and updates the CUI Registry as needed;

(9) Prescribes standards, procedures, guidance, and instructions for oversight and agency self-inspection programs, to include performing on-site inspections;

(10) Standardizes forms and procedures to implement the CUI Program;

(11) Considers and resolves, as appropriate, disputes, complaints, and suggestions about the CUI Program from entities in or outside the Government; and

(12) Reports to the President on implementation of the Order and the requirements of this part. This includes publishing a report on the status of agency implementation at least biennially, or more frequently at the discretion of the CUI EA.

(b) Agency heads:

(1) Ensure agency senior leadership support, and make adequate resources available to implement, manage, and comply with the CUI Program as administered by the CUI EA;

(2) Designate a CUI senior agency official (SAO) responsible for oversight of the agency's CUI Program implementation, compliance, and management, and include the official in agency contact listings;

(3) Approve agency policies, as required, to implement the CUI Program; and

(4) Establish and maintain a self-inspection program to ensure the agency complies with the principles and requirements of the Order, this part, and the CUI Registry.

(c) The CUI SAO:

(1) Must be at the Senior Executive Service level or equivalent;

(2) Directs and oversees the agency's CUI Program;

(3) Designates a CUI Program manager;

(4) Ensures the agency has CUI implementing policies and plans, as needed;

(5) Implements an education and training program pursuant to § 2002.30;

(6) Upon request of the CUI EA under section 5(c) of the Order, provides an update of CUI implementation efforts for subsequent reporting;

(7) Submits to the CUI EA any law, regulation, or Government-wide policy not already incorporated into the CUI Registry that the agency proposes to use to designate unclassified information for safeguarding or dissemination controls;

(8) Coordinates with the CUI EA, as appropriate, any proposed law, regulation, or Government-wide policy that would establish, eliminate, or modify a category or subcategory of CUI, or change information controls applicable to CUI;

(9) Establishes processes for handling CUI decontrol requests submitted by authorized holders;

(10) Includes a description of all existing waivers in the annual report to the CUI EA, along with the rationale for each waiver and, where applicable, the alternative steps the agency is taking to ensure sufficient protection of CUI within the agency;

(11) Develops and implements the agency's self-inspection program;

(12) Establishes a mechanism by which authorized holders (both inside and outside the agency) can contact a designated agency representative for instructions when they receive unmarked or improperly marked information the agency designated as CUI;

(13) Establishes a process to accept and manage challenges to CUI status (which may include improper or absent marking);

(14) Establish processes and criteria for reporting and investigating misuse of CUI; and

(15) Follows the requirements for the CUI SAO listed in § 2002.38(e), regarding waivers for CUI.

(d) The Director of National Intelligence: After consulting with the heads of affected agencies and the Director of ISOO, may issue directives to implement this part with respect to the protection of intelligence sources, methods, and activities. Such directives must be in accordance with the Order, this part, and the CUI Registry.

## Subpart B—Key Elements of the CUI Program

### § 2002.10 The CUI Registry.

(a) The CUI EA maintains the CUI Registry, which:

(1) Is the authoritative central repository for all guidance, policy, instructions, and information on CUI (other than the Order and this part);

(2) Is publicly accessible;

(3) Includes authorized CUI categories and subcategories, associated markings, applicable decontrolling procedures, and other guidance and policy information; and

(4) Includes citation(s) to laws, regulations, or Government-wide policies that form the basis for each category and subcategory.

(b) Agencies and authorized holders must follow the instructions contained in the CUI Registry in addition to all requirements in the Order and this part.

### § 2002.12 CUI categories and subcategories.

(a) CUI categories and subcategories are the exclusive designations for identifying unclassified information that a law, regulation, or Government-wide policy requires or permits agencies to handle by means of safeguarding or dissemination controls. All unclassified information throughout the executive branch that requires any kind of safeguarding or dissemination control is CUI. Agencies may not implement safeguarding or dissemination controls for any unclassified information other than those controls permitted by the CUI Program.

(b) Agencies may use only those categories or subcategories approved by the CUI EA and published in the CUI Registry to designate information as CUI.

### § 2002.14 Safeguarding.

(a) *General safeguarding policy.* (1) Pursuant to the Order and this part, and in consultation with affected agencies, the CUI EA issues safeguarding standards in this part and, as necessary, in the CUI Registry, updating them as needed. These standards require agencies to safeguard CUI at all times in a manner that minimizes the risk of unauthorized disclosure while allowing timely access by authorized holders.

(2) Safeguarding measures that agencies are authorized or accredited to use for classified information and national security systems are also sufficient for safeguarding CUI in accordance with the organization's management and acceptance of risk.

(3) Agencies may increase CUI Basic's confidentiality impact level above moderate only internally, or by means of agreements with agencies or non-executive branch entities (including agreements for the operation of an information system on behalf of the agencies). Agencies may not otherwise require controls for CUI Basic at a level higher than permitted in the CUI Basic requirements when disseminating the CUI Basic outside the agency.

(4) Authorized holders must comply with policy in the Order, this part, and the CUI Registry, and review any applicable agency CUI policies for additional instructions. For information designated as CUI Specified, authorized holders must also follow the procedures in the underlying laws, regulations, or Government-wide policies.

(b) *CUI safeguarding standards.* Authorized holders must safeguard CUI using one of the following types of standards:

(1) *CUI Basic.* CUI Basic is the default set of standards authorized holders must apply to all CUI unless the CUI Registry annotates that CUI as CUI Specified.

(2) *CUI Specified.* (i) Authorized holders safeguard CUI Specified in accordance with the requirements of the underlying authorities indicated in the CUI Registry.

(ii) When the laws, regulations, or Government-wide policies governing a specific type of CUI Specified are silent on either a safeguarding or disseminating control, agencies must apply CUI Basic standards to that aspect of the information's controls, unless this results in treatment that does not accord with the CUI Specified authority. In such cases, agencies must apply the CUI Specified standards and may apply limited dissemination controls listed in the CUI Registry to ensure they treat the information in accord with the CUI Specified authority.

(c) *Protecting CUI under the control of an authorized holder.* Authorized holders must take reasonable precautions to guard against unauthorized disclosure of CUI. They must include the following measures among the reasonable precautions:

(1) Establish controlled environments in which to protect CUI from unauthorized access or disclosure and make use of those controlled environments;

(2) Reasonably ensure that unauthorized individuals cannot access or observe CUI, or overhear conversations discussing CUI;

(3) Keep CUI under the authorized holder's direct control or protect it with at least one physical barrier, and reasonably ensure that the authorized holder or the physical barrier protects the CUI from unauthorized access or observation when outside a controlled environment; and

(4) Protect the confidentiality of CUI that agencies or authorized holders process, store, or transmit on Federal information systems in accordance with the applicable security requirements and controls established in FIPS PUB 199, FIPS PUB 200, and NIST SP 800–53, (incorporated by reference, see § 2002.2), and paragraph (g) of this section.

(d) *Protecting CUI when shipping or mailing.* When sending CUI, authorized holders:

(1) May use the United States Postal Service or any commercial delivery service when they need to transport or deliver CUI to another entity;

(2) Should use in-transit automated tracking and accountability tools when they send CUI;

(3) May use interoffice or interagency mail systems to transport CUI; and

(4) Must mark packages that contain CUI according to marking requirements contained in this part and in guidance published by the CUI EA. See § 2002.20 for more guidance on marking requirements.

(e) *Reproducing CUI.* Authorized holders:

(1) May reproduce (*e.g.*, copy, scan, print, electronically duplicate) CUI in furtherance of a lawful Government purpose; and

(2) Must ensure, when reproducing CUI documents on equipment such as printers, copiers, scanners, or fax machines, that the equipment does not retain data or the agency must otherwise sanitize it in accordance with NIST SP

800–53 (incorporated by reference, see § 2002.2).

(f) *Destroying CUI.* (1) Authorized holders may destroy CUI when:

(i) The agency no longer needs the information; and

(ii) Records disposition schedules published or approved by NARA allow.

(2) When destroying CUI, including in electronic form, agencies must do so in a manner that makes it unreadable, indecipherable, and irrecoverable. Agencies must use any destruction method specifically required by law, regulation, or Government-wide policy for that CUI. If the authority does not specify a destruction method, agencies must use one of the following methods:

(i) Guidance for destruction in NIST SP 800–53, Security and Privacy Controls for Federal Information Systems and Organizations, and NIST SP 800–88, Guidelines for Media Sanitization (incorporated by reference, see § 2002.2); or

(ii) Any method of destruction approved for Classified National Security Information, as delineated in 32 CFR 2001.47, Destruction, or any implementing or successor guidance.

(g) *Information systems that process, store, or transmit CUI.* In accordance with FIPS PUB 199 (incorporated by reference, see § 2002.2), CUI Basic is categorized at no less than the moderate confidentiality impact level. FIPS PUB 199 defines the security impact levels for Federal information and Federal information systems. Agencies must also apply the appropriate security requirements and controls from FIPS PUB 200 and NIST SP 800–53 (incorporated by reference, see § 2002.2) to CUI in accordance with any risk-based tailoring decisions they make. Agencies may increase CUI Basic's confidentiality impact level above moderate only internally, or by means of agreements with agencies or non-executive branch entities (including agreements for the operation of an information system on behalf of the agencies). Agencies may not otherwise require controls for CUI Basic at a level higher or different from those permitted in the CUI Basic requirements when disseminating the CUI Basic outside the agency.

(h) Information systems that process, store, or transmit CUI are of two different types:

(1) A Federal information system is an information system used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency. An information system operated on behalf of an agency provides information processing services to the agency that the Government might otherwise perform itself but has decided to outsource. This includes systems operated exclusively for Government use and systems operated for multiple users (multiple Federal agencies or Government and private sector users). Information systems that a non-executive branch entity operates on behalf of an agency are subject to the requirements of this part as though they are the agency's systems, and agencies may require these systems to meet additional requirements the agency sets for its own internal systems.

(2) A non-Federal information system is any information system that does not meet the criteria for a Federal information system. Agencies may not treat non-Federal information systems as though they are agency systems, so agencies cannot require that non-executive branch entities protect these systems in the same manner that the agencies might protect their own information systems. When a non-executive branch entity receives Federal information only incidental to providing a service or product to the Government other than processing services, its information systems are not considered Federal information systems. NIST SP 800–171 (incorporated by reference, see § 2002.2) defines the requirements necessary to protect CUI Basic on non-Federal information systems in accordance with the requirements of this part. Agencies must use NIST SP 800–171 when establishing security requirements to protect CUI's confidentiality on non-Federal information systems (unless the authorizing law, regulation, or Government-wide policy listed in the CUI Registry for the CUI category or subcategory of the information involved prescribes specific safeguarding requirements for protecting the information's confidentiality, or unless an agreement establishes requirements to protect CUI Basic at higher than moderate confidentiality).

### § 2002.16 Accessing and disseminating.

(a) *General policy*—(1) *Access.* Agencies should disseminate and permit access to CUI, provided such access or dissemination:

(i) Abides by the laws, regulations, or Government-wide policies that established the CUI category or subcategory;

(ii) Furthers a lawful Government purpose;

(iii) Is not restricted by an authorized limited dissemination control established by the CUI EA; and,

(iv) Is not otherwise prohibited by law.

(2) *Dissemination controls.* (i) Agencies must impose dissemination controls judiciously and should do so only to apply necessary restrictions on access to CUI, including those required by law, regulation, or Government-wide policy.

(ii) Agencies may not impose controls that unlawfully or improperly restrict access to CUI.

(3) *Marking.* Prior to disseminating CUI, authorized holders must label CUI according to marking guidance issued by the CUI EA, and must include any specific markings required by law, regulation, or Government-wide policy.

(4) *Reasonable expectation.* To disseminate CUI to a non-executive branch entity, authorized holders must reasonably expect that all intended recipients are authorized to receive the CUI and have a basic understanding of how to handle it.

(5) *Agreements.* Agencies should enter into agreements with any non-executive branch or foreign entity with which the agency shares or intends to share CUI, as follows (except as provided in paragraph (a)(7) of this section):

(i) *Information-sharing agreements.* When agencies intend to share CUI with a non-executive branch entity, they should enter into a formal agreement (see § 2004.4(c) for more information on agreements), whenever feasible. Such an agreement may take any form the agency head approves, but when established, it must include a requirement to comply with Executive Order 13556, Controlled Unclassified Information, November 4, 2010 (3 CFR, 2011 Comp., p. 267) or any successor order (the Order), this part, and the CUI Registry.

(ii) *Sharing CUI without a formal agreement.* When an agency cannot enter into agreements under paragraph (a)(6)(i) of this section, but the agency's mission requires it to disseminate CUI to non-executive branch entities, the agency must communicate to the recipient that the Government strongly encourages the non-executive branch entity to protect CUI in accordance with the Order, this part, and the CUI Registry, and that such protections should accompany the CUI if the entity disseminates it further.

(iii) *Foreign entity sharing.* When entering into agreements or arrangements with a foreign entity, agencies should encourage that entity to protect CUI in accordance with the Order, this part, and the CUI Registry to the extent possible, but agencies may use their judgment as to what and how much to communicate, keeping in mind the ultimate goal of safeguarding CUI. If such agreements or arrangements include safeguarding or dissemination controls on unclassified information, the agency must not establish a parallel protection regime to the CUI Program: For example, the agency must use CUI markings rather than alternative ones (*e.g.*, such as SBU) for safeguarding or dissemination controls on CUI received from or sent to foreign entities, must abide by any requirements set by the CUI category or subcategory's governing laws, regulations, or Government-wide policies, etc.

(iv) *Pre-existing agreements.* When an agency entered into an information-sharing agreement prior to November 14, 2016, the agency should modify any terms in that agreement that conflict with the requirements in the Order, this part, and the CUI Registry, when feasible.

(6) *Agreement content.* At a minimum, agreements with non-executive branch entities must include provisions that state:

(i) Non-executive branch entities must handle CUI in accordance with the Order, this part, and the CUI Registry;

(ii) Misuse of CUI is subject to penalties established in applicable laws, regulations, or Government-wide policies; and

(iii) The non-executive branch entity must report any non-compliance with handling requirements to the disseminating agency using methods approved by that agency's SAO. When the disseminating agency is not the designating agency, the disseminating agency must notify the designating agency.

(7) *Exceptions to agreements.* Agencies need not enter a written agreement when they share CUI with the following entities:

(i) Congress, including any committee, subcommittee, joint committee, joint subcommittee, or office thereof;

(ii) A court of competent jurisdiction, or any individual or entity when directed by an order of a court of competent jurisdiction or a Federal administrative law judge (ALJ) appointed under 5 U.S.C. 3501;

(iii) The Comptroller General, in the course of performing duties of the Government Accountability Office; or

(iv) Individuals or entities, when the agency releases information to them pursuant to a FOIA or Privacy Act request.

(b) *Controls on accessing and disseminating CUI*—(1) *CUI Basic.* Authorized holders should disseminate and encourage access to CUI Basic for any recipient when the access meets the requirements set out in paragraph (a)(1) of this section.

(2) *CUI Specified.* Authorized holders disseminate and allow access to CUI Specified as required or permitted by the authorizing laws, regulations, or Government-wide policies that established that CUI Specified.

(i) The CUI Registry annotates CUI that requires or permits Specified controls based on law, regulation, and Government-wide policy.

(ii) In the absence of specific dissemination restrictions in the authorizing law, regulation, or Government-wide policy, agencies may disseminate CUI Specified as they would CUI Basic.

(3) *Receipt of CUI.* Non-executive branch entities may receive CUI directly from members of the executive branch or as sub-recipients from other non-executive branch entities.

(4) *Limited dissemination.* (i) Agencies may place additional limits on disseminating CUI only through use of the limited dissemination controls approved by the CUI EA and published in the CUI Registry. These limited dissemination controls are separate from any controls that a CUI Specified authority requires or permits.

(ii) Using limited dissemination controls to unnecessarily restrict access to CUI is contrary to the goals of the CUI Program. Agencies may therefore use these controls only when it furthers a lawful Government purpose, or laws, regulations, or Government-wide policies require or permit an agency to do so. If an authorized holder has significant doubt about whether it is appropriate to use a limited dissemination control, the authorized holder should consult with and follow the designating agency's policy. If, after consulting the policy, significant doubt still remains, the authorized holder should not apply the limited dissemination control.

(iii) Only the designating agency may apply limited dissemination controls to CUI. Other entities that receive CUI and seek to apply additional controls must request permission to do so from the designating agency.

(iv) Authorized holders may apply limited dissemination controls to any CUI for which they are required or permitted to restrict access by or to certain entities.

(v) Designating entities may combine approved limited dissemination controls listed in the CUI Registry to accommodate necessary practices.

(c) *Methods of disseminating CUI.* (1) Before disseminating CUI, authorized holders must reasonably expect that all intended recipients have a lawful Government purpose to receive the CUI. Authorized holders may then disseminate the CUI by any method that meets the safeguarding requirements of this part and the CUI Registry and ensures receipt in a timely manner, unless the laws, regulations, or Government-wide policies that govern that CUI require otherwise.

(2) To disseminate CUI using systems or components that are subject to NIST guidelines and publications (*e.g.*, email applications, text messaging, facsimile, or voicemail), agencies must do so in accordance with the no-less-than-moderate confidentiality impact value set out in FIPS PUB 199, FIPS PUB 200, NIST SP 800–53 (incorporated by reference, see § 2002.2).

### § 2002.18 Decontrolling.

(a) Agencies should decontrol as soon as practicable any CUI designated by their agency that no longer requires safeguarding or dissemination controls, unless doing so conflicts with the governing law, regulation, or Government-wide policy.

(b) Agencies may decontrol CUI automatically upon the occurrence of one of the conditions below, or through an affirmative decision by the designating agency:

(1) When laws, regulations or Government-wide policies no longer require its control as CUI and the authorized holder has the appropriate authority under the authorizing law, regulation, or Government-wide policy;

(2) When the designating agency decides to release it to the public by making an affirmative, proactive disclosure;

(3) When the agency discloses it in accordance with an applicable information access statute, such as the FOIA, or the Privacy Act (when legally permissible), if the agency incorporates such disclosures into its public release processes; or

(4) When a pre-determined event or date occurs, as described in § 2002.20(g), unless law, regulation, or Government-wide policy requires coordination first.

(c) The designating agency may also decontrol CUI:

(1) In response to a request by an authorized holder to decontrol it; or

(2) Concurrently with any declassification action under Executive Order 13526 or any predecessor or successor order, as long as the information also appropriately qualifies for decontrol as CUI.

(d) An agency may designate in its CUI policies which agency personnel it authorizes to decontrol CUI, consistent with law, regulation, and Government-wide policy.

(e) Decontrolling CUI relieves authorized holders from requirements to handle the information under the CUI Program, but does not constitute authorization for public release.

(f) Authorized holders must clearly indicate that CUI is no longer controlled when restating, paraphrasing, re-using, releasing to the public, or donating it to a private institution. Otherwise, authorized holders do not have to mark, review, or take other actions to indicate the CUI is no longer controlled.

(1) Agency policy may allow authorized holders to remove or strike through only those CUI markings on the first or cover page of the decontrolled CUI and markings on the first page of any attachments that contain CUI.

(2) If an authorized holder uses the decontrolled CUI in a newly created document, the authorized holder must remove all CUI markings for the decontrolled information.

(g) Once decontrolled, any public release of information that was formerly CUI must be in accordance with applicable law and agency policies on the public release of information.

(h) Authorized holders may request that the designating agency decontrol certain CUI.

(i) If an authorized holder publicly releases CUI in accordance with the designating agency's authorized procedures, the release constitutes decontrol of the information.

(j) Unauthorized disclosure of CUI does not constitute decontrol.

(k) Agencies must not decontrol CUI in an attempt to conceal, or to otherwise circumvent accountability for, an identified unauthorized disclosure.

(l) When laws, regulations, or Government-wide policies require specific decontrol procedures, authorized holders must follow such requirements.

(m) The Archivist of the United States may decontrol records transferred to the National Archives in accordance with § 2002.34, absent a specific agreement otherwise with the designating agency. The Archivist decontrols records to facilitate public access pursuant to 44 U.S.C. 2108 and NARA's regulations at 36 CFR parts 1235, 1250, and 1256.

### § 2002.20 Marking.

(a) *General marking policy.* (1) CUI markings listed in the CUI Registry are the only markings authorized to designate unclassified information requiring safeguarding or dissemination controls. Agencies and authorized holders must, in accordance with the implementation timelines established for the agency by the CUI EA:

(i) Discontinue all use of legacy or other markings not permitted by this part or included in the CUI Registry; and

(ii) Uniformly and conspicuously apply CUI markings to all CUI exclusively in accordance with the part and the CUI Registry, unless this part or the CUI EA otherwise specifically permits. See paragraph (a)(6) of this section and §§ 2002.38, Waivers of CUI requirements, and 2002.36, Legacy materials, for more information.

(2) Agencies may not modify CUI Program markings or deviate from the method of use prescribed by the CUI EA (in this part and the CUI Registry) in an effort to accommodate existing agency marking practices, except in circumstances approved by the CUI EA. The CUI Program prohibits using markings or practices not included in this part or the CUI Registry. If legacy markings remain on information, the legacy markings are void and no longer indicate that the information is protected or that it is or qualifies as CUI.

(3) An agency receiving an incorrectly marked document should notify either the disseminating entity or the designating agency, and request a properly marked document.

(4) The designating agency determines that the information qualifies for CUI status and applies the appropriate CUI marking when it designates that information as CUI.

(5) If an agency has information within its control that qualifies as CUI but has not been previously marked as CUI for any reason (for example, pursuant to an agency internal marking waiver as referenced in § 2002.38 (a)), the agency must mark it as CUI prior to disseminating it.

(6) Agencies must not mark information as CUI to conceal illegality, negligence, ineptitude, or other disreputable circumstances embarrassing to any person, any agency, the Federal Government, or any of their partners, or for any purpose other than to adhere to the law, regulation, or Government-wide policy authorizing the control.

(7) The lack of a CUI marking on information that qualifies as CUI does not exempt the authorized holder from abiding by applicable handling requirements as described in the Order, this part, and the CUI Registry.

(8) When it is impractical for an agency to individually mark CUI due to quantity or nature of the information, or when an agency has issued a limited CUI marking waiver, authorized holders must make recipients aware of the information's CUI status using an alternate marking method that is readily apparent (for example, through user access agreements, a computer system digital splash screen (*e.g.,* alerts that flash up when accessing the system), or signs in storage areas or on containers).

(b) *The CUI banner marking.* Designators of CUI must mark all CUI with a CUI banner marking, which may include up to three elements:

(1) *The CUI control marking (mandatory).* (i) The CUI control marking may consist of either the word "CONTROLLED" or the acronym "CUI," at the designator's discretion. Agencies may specify in their CUI policy that employees must use one or the other.

(ii) The CUI Registry contains additional, specific guidance and instructions for using the CUI control marking.

(iii) Authorized holders who designate CUI may not use alternative markings to identify or mark items as CUI.

(2) *CUI category or subcategory markings (mandatory for CUI Specified).* (i) The CUI Registry lists the category and subcategory markings, which align with the CUI's governing category or subcategory.

(ii) Although the CUI Program does not require agencies to use category or subcategory markings on CUI Basic, an agency's CUI SAO may establish agency policy that mandates use of CUI category or subcategory markings on CUI Basic.

(iii) However, authorized holders must include in the CUI banner marking all CUI Specified category or subcategory markings that pertain to the information in the document. If law, regulation, or Government-wide policy requires specific marking, disseminating, informing, distribution limitation, or warning statements, agencies must use those indicators as those authorities require or permit. However, agencies must not include these additional indicators in the CUI banner marking or CUI portion markings.

(iv) The CUI Registry contains additional, specific guidance and instructions for using CUI category and subcategory markings.

(3) *Limited dissemination control markings.* (i) CUI limited dissemination control markings align with limited dissemination controls established by the CUI EA under § 2002.16(b)(4).

(ii) Agency policy should include specific criteria establishing which authorized holders may apply limited dissemination controls and their corresponding markings, and when. Such agency policy must align with the requirements in § 2002.16(b)(4).

(iii) The CUI Registry contains additional, specific guidance and instructions for using limited dissemination control markings.

(c) *Using the CUI banner marking.* (1) The content of the CUI banner marking must apply to the whole document (*i.e.,* inclusive of all CUI within the document) and must be the same on each page of the document that includes CUI.

(2) The CUI Registry contains additional, specific guidelines and instructions for using the CUI banner marking.

(d) *CUI designation indicator (mandatory).* (1) All documents containing CUI must carry an indicator of who designated the CUI within it. This must include the designator's agency (at a minimum) and may take any form that identifies the designating agency, including letterhead or other standard agency indicators, or adding a "Controlled by" line (for example, "Controlled by: Division 5, Department of Good Works.").

(2) The designation indicator must be readily apparent to authorized holders and may appear only on the first page or cover. The CUI Registry contains additional, specific guidance and requirements for using CUI designation indicators.

(e) *CUI decontrolling indicators.* (1) Where feasible, designating agencies must include a specific decontrolling date or event with all CUI. Agencies may do so in any manner that makes the decontrolling schedule readily apparent to an authorized holder.

(2) Authorized holders may consider specific items of CUI as decontrolled as of the date indicated, requiring no further review by, or communication with, the designator.

(3) If using a specific event after which the CUI is considered decontrolled:

(i) The event must be foreseeable and verifiable by any authorized holder (*e.g.,* not based on or requiring special access or knowledge); and

(ii) The designator should include point of contact and preferred method of contact information in the decontrol indicator when using this method, to allow authorized holders to verify that a specified event has occurred.

(4) The CUI Registry contains additional, specific guidance and instructions for using limited dissemination control markings.

(f) *Portion marking CUI.* (1) Agencies are permitted and encouraged to portion mark all CUI, to facilitate information sharing and proper handling.

(2) Authorized holders who designate CUI may mark CUI only with portion markings approved by the CUI EA and listed in the CUI Registry.

(3) CUI portion markings consist of the following elements:

(i) The CUI control marking, which must be the acronym "CUI";

(ii) CUI category/subcategory portion markings (if required or permitted); and

(iii) CUI limited dissemination control portion markings (if required).

(4) When using portion markings:

(i) CUI category and subcategory portion markings are optional for CUI Basic. Agencies may manage their use by means of agency policy.

(ii) Authorized holders permitted to designate CUI must portion mark both CUI and uncontrolled unclassified portions.

(5) In cases where portions consist of several segments, such as paragraphs, sub-paragraphs, bullets, and sub-bullets, and the control level is the same throughout, designators of CUI may place a single portion marking at the beginning of the primary paragraph or bullet. However, if the portion includes different CUI categories or subcategories, or if the portion includes some CUI and some uncontrolled unclassified information, authorized holders should portion mark all segments separately to avoid improper control of any one segment.

(6) Each portion must reflect the control level of only that individual portion. If the information contained in a sub-paragraph or sub-bullet is a different CUI category or subcategory from its parent paragraph or parent bullet, this does not make the parent paragraph or parent bullet controlled at that same level.

(7) The CUI Registry contains additional, specific guidance and instructions for using CUI portion markings and uncontrolled unclassified portion markings.

(g) *Commingling CUI markings with Classified National Security Information (CNSI).* When authorized holders include CUI in documents that also contain CNSI, the decontrolling provisions of the Order and this part apply only to portions marked as CUI. In addition, authorized holders must:

(1) Portion mark all CUI to ensure that authorized holders can distinguish CUI portions from portions containing classified and uncontrolled unclassified information;

(2) Include the CUI control marking, CUI Specified category and subcategory markings, and limited dissemination control markings in an overall banner marking; and

(3) Follow the requirements of the Order and this part, and instructions in the CUI Registry on marking CUI when commingled with CNSI.

(h) *Commingling restricted data (RD) and formerly restricted data (FRD) with CUI.* (1) To the extent possible, avoid commingling RD or FRD with CUI in the same document. When it is not practicable to avoid such commingling, follow the marking requirements in the Order and this part, and instructions in the CUI Registry, as well as the marking requirements in 10 CFR part 1045, Nuclear Classification and Declassification.

(2) Follow the requirements of 10 CFR part 1045 when extracting an RD or FRD portion for use in a new document.

(3) Follow the requirements of the Order and this part, and instructions in the CUI Registry if extracting a CUI portion for use in a new document.

(4) The lack of declassification instructions for RD or FRD portions does not eliminate the requirement to process commingled documents for declassification in accordance with the Atomic Energy Act, or 10 CFR part 1045.

(i) *Packages and parcels containing CUI.* (1) Address packages that contain CUI for delivery only to a specific recipient.

(2) Do not put CUI markings on the outside of an envelope or package, or otherwise indicate on the outside that the item contains CUI.

(j) *Transmittal document marking requirements.* (1) When a transmittal document accompanies CUI, the transmittal document must include a CUI marking on its face ("CONTROLLED" or "CUI"), indicating that CUI is attached or enclosed.

(2) The transmittal document must also include conspicuously on its face the following or similar instructions, as appropriate:

(i) "When enclosure is removed, this document is Uncontrolled Unclassified Information"; or

(ii) "When enclosure is removed, this document is (control level); upon removal, this document does not contain CUI."

(k) *Working papers.* Mark working papers containing CUI the same way as the finished product containing CUI would be marked and as required for any CUI contained within them. Handle them in accordance with this part and the CUI Registry.

(l) *Using supplemental administrative markings with CUI.* (1) Agency heads may authorize the use of supplemental administrative markings (*e.g.* "Pre-decisional," "Deliberative," "Draft") for use with CUI.

(2) Agency heads may not authorize the use of supplemental administrative

markings to establish safeguarding requirements or disseminating restrictions, or to designate the information as CUI. However, agencies may use these markings to inform recipients of the non-final status of documents under development to avoid confusion and maintain the integrity of an agency's decision-making process.

(3) Agencies must detail requirements for using supplemental administrative markings with CUI in agency policy that is available to anyone who may come into possession of CUI with these markings.

(4) Authorized holders must not incorporate or include supplemental administrative markings in the CUI marking scheme detailed in this part and the CUI Registry.

(5) Supplemental administrative markings must not duplicate any CUI marking described in this part or the CUI Registry.

(m) *Unmarked CUI.* Treat unmarked information that qualifies as CUI as described in the Order, § 2002.8(c), and the CUI Registry.

### § 2002.22 Limitations on applicability of agency CUI policies.

(a) Agency CUI policies do not apply to entities outside that agency unless a law, regulation, or Government-wide policy requires or permits the controls contained in the agency policy to do so, and the CUI Registry lists that law, regulation, or Government-wide policy as a CUI authority.

(b) Agencies may not include additional requirements or restrictions on handling CUI other than those permitted in the Order, this part, or the CUI Registry when entering into agreements.

### § 2002.24 Agency self-inspection program.

(a) The agency must establish a self-inspection program pursuant to the requirement in § 2002.8(b)(4).

(b) The self-inspection program must include:

(1) At least annual review and assessment of the agency's CUI program. The agency head or CUI SAO should determine any greater frequency based on program needs and the degree to which the agency engages in designating CUI;

(2) Self-inspection methods, reviews, and assessments that serve to evaluate program effectiveness, measure the level of compliance, and monitor the progress of CUI implementation;

(3) Formats for documenting self-inspections and recording findings when not prescribed by the CUI EA;

(4) Procedures by which to integrate lessons learned and best practices arising from reviews and assessments into operational policies, procedures, and training;

(5) A process for resolving deficiencies and taking corrective actions; and

(6) Analysis and conclusions from the self-inspection program, documented on an annual basis and as requested by the CUI EA.

## Subpart C—CUI Program Management

### § 2002.30 Education and training.

(a) The CUI SAO must establish and implement an agency training policy. At a minimum, the training policy must address the means, methods, and frequency of agency CUI training.

(b) Agency training policy must ensure that personnel who have access to CUI receive training on designating CUI, relevant CUI categories and subcategories, the CUI Registry, associated markings, and applicable safeguarding, disseminating, and decontrolling policies and procedures.

(c) Agencies must train employees on these matters when the employees first begin working for the agency and at least once every two years thereafter.

(d) The CUI EA reviews agency training materials to ensure consistency and compliance with the Order, this part, and the CUI Registry.

### § 2002.32 CUI cover sheets.

(a) Agencies may use cover sheets for CUI. If an agency chooses to use cover sheets, it must use CUI EA-approved cover sheets, which agencies can find on the CUI Registry.

(b) Agencies may use cover sheets to identify CUI, alert observers that CUI is present from a distance, and serve as a shield to protect the attached CUI from inadvertent disclosure.

### § 2002.34 Transferring records.

(a) When feasible, agencies must decontrol records containing CUI prior to transferring them to NARA.

(b) When an agency cannot decontrol records before transferring them to NARA, the agency must:

(1) Indicate on a Transfer Request (TR) in NARA's Electronic Records Archives (ERA) or on an SF 258 paper transfer form, that the records should continue to be controlled as CUI (subject to NARA's regulations on transfer, public availability, and access; see 36 CFR parts 1235, 1250, and 1256); and

(2) For hard copy transfer, do not place a CUI marking on the outside of the container.

(c) If the agency does not indicate the status as CUI on the TR or SF 258, NARA may assume the agency decontrolled the information prior to transfer, regardless of any CUI markings on the actual records.

### § 2002.36 Legacy materials.

(a) Agencies must review documents created prior to November 14, 2016 and re-mark any that contain information that qualifies as CUI in accordance with the Order, this part, and the CUI Registry. When agencies do not individually re-mark legacy material that qualifies as CUI, agencies must use an alternate permitted marking method (see § 2002.20(a)(8)).

(b) When the CUI SAO deems re-marking legacy documents to be excessively burdensome, the CUI SAO may grant a legacy material marking waiver under § 2002.38(b).

(c) When the agency re-uses any information from legacy documents that qualifies as CUI, whether the documents have obsolete control markings or not, the agency must designate the newly-created document (or other re-use) as CUI and mark it accordingly.

### § 2002.38 Waivers of CUI requirements.

(a) *Limited CUI marking waivers within the agency.* When an agency designates information as CUI but determines that marking it as CUI is excessively burdensome, an agency's CUI SAO may approve waivers of all or some of the CUI marking requirements while that CUI remains within agency control.

(b) *Limited legacy material marking waivers within the agency.* (1) In situations in which the agency has a substantial amount of stored information with legacy markings, and removing legacy markings and designating or re-marking it as CUI would be excessively burdensome, the agency's CUI SAO may approve a waiver of these requirements for some or all of that information while it remains under agency control.

(2) When an authorized holder re-uses any legacy information or information derived from legacy documents that qualifies as CUI, they must remove or redact legacy markings and designate or re-mark the information as CUI, even if the information is under a legacy material marking waiver prior to re-use.

(c) *Exigent circumstances waivers.* (1) In exigent circumstances, the agency head or the CUI SAO may waive the provisions and requirements established in this part or the CUI Registry for any CUI while it is within the agency's possession or control, unless specifically prohibited by applicable laws, regulations, or Government-wide policies.

(2) Exigent circumstances waivers may apply when an agency shares the information with other agencies or non-Federal entities. In such cases, the authorized holders must make recipients aware of the CUI status of any disseminated information.

(d) *For all waivers.* (1) The CUI SAO must still ensure that the agency appropriately safeguards and disseminates the CUI. See § 2002.20(a)(7);

(2) The CUI SAO must detail in each waiver the alternate protection methods the agency will employ to ensure protection of CUI subject to the waiver;

(3) All marking waivers apply to CUI subject to the waiver only while that agency continues to possess that CUI. No marking waiver may accompany CUI when an authorized holder disseminates it outside that agency;

(4) Authorized holders must uniformly and conspicuously apply CUI markings to all CUI prior to disseminating it outside the agency unless otherwise specifically permitted by the CUI EA; and

(5) When the circumstances requiring the waiver end, the CUI SAO must reinstitute the requirements for all CUI subject to the waiver without delay.

(e) The CUI SAO must:

(1) Retain a record of each waiver;

(2) Include a description of all current waivers and waivers issued during the preceding year in the annual report to the CUI EA, along with the rationale for each waiver and the alternate steps the agency takes to ensure sufficient protection of CUI; and

(3) Notify authorized recipients and the public of these waivers.

### § 2002.44 CUI and disclosure statutes.

(a) *General policy.* The fact that an agency designates certain information as CUI does not affect an agency's or employee's determinations pursuant to any law that requires the agency or the employee to disclose that information or permits them to do so as a matter of discretion. The agency or employee must make such determinations according to the criteria set out in the governing law, not on the basis of the information's status as CUI.

(b) *CUI and the Freedom of Information Act (FOIA).* Agencies must not cite the FOIA as a CUI safeguarding or disseminating control authority for CUI. When an agency is determining whether to disclose information in response to a FOIA request, the agency must base its decision on the content of the information and applicability of any FOIA statutory exemptions, regardless of whether an agency designates or marks the information as CUI. There may be circumstances in which an agency may disclose CUI to an individual or entity, including through a FOIA response, but such disclosure does not always constitute public release as defined in this part. Although disclosed via a FOIA response, the agency may still need to control the CUI while the agency continues to hold the information, despite the disclosure, unless the agency otherwise decontrols it (or the agency includes in its policies that FOIA disclosure always results in public release and the CUI does not otherwise have another legal requirement for its continued control).

(c) *CUI and the Whistleblower Protection Act.* This part does not change or affect existing legal protections for whistleblowers. The fact that an agency designates or marks certain information as CUI does not determine whether an individual may lawfully disclose that information under a law or other authority, and does not preempt or otherwise affect whistleblower legal protections provided by law, regulation, or executive order or directive.

### § 2002.46 CUI and the Privacy Act.

The fact that records are subject to the Privacy Act of 1974 does not mean that agencies must mark them as CUI. Consult agency policies or guidance to determine which records may be subject to the Privacy Act; consult the CUI Registry to determine which privacy information must be marked as CUI. Information contained in Privacy Act systems of records may also be subject to controls under other CUI categories or subcategories and the agency may need to mark that information as CUI for that reason. In addition, when determining whether the agency must protect certain information under the Privacy Act, or whether the Privacy Act allows the agency to release the information to an individual, the agency must base its decision on the content of the information and the Privacy Act's criteria, regardless of whether an agency designates or marks the information as CUI.

### § 2002.48 CUI and the Administrative Procedure Act (APA).

Nothing in the regulations in this part alters the Administrative Procedure Act (APA) or the powers of Federal administrative law judges (ALJs) appointed thereunder, including the power to determine confidentiality of information in proceedings over which they preside. Nor do the regulations in this part impose requirements concerning the manner in which ALJs designate, disseminate, control access to, decontrol, or mark such information, or make such determinations.

### § 2002.50 Challenges to designation of information as CUI.

(a) Authorized holders of CUI who, in good faith, believe that its designation as CUI is improper or incorrect, or who believe they have received unmarked CUI, should notify the disseminating agency of this belief. When the disseminating agency is not the designating agency, the disseminating agency must notify the designating agency.

(b) If the information at issue is involved in Government litigation, or the challenge to its designation or marking as CUI arises as part of the litigation, the issue of whether the challenger may access the information will be addressed via the litigation process instead of by the agency CUI program. Challengers should nonetheless notify the agency of the issue through the agency process described below, and include its litigation connection.

(c) CUI SAOs must create a process within their agency to accept and manage challenges to CUI status. At a minimum, this process must include a timely response to the challenger that:

(1) Acknowledges receipt of the challenge;

(2) States an expected timetable for response to the challenger;

(3) Provides an opportunity for the challenger to define a rationale for belief that the CUI in question is inappropriately designated;

(4) Gives contact information for the official making the agency's decision in this matter; and

(5) Ensures that challengers who are authorized holders have the option of bringing such challenges anonymously, and that challengers are not subject to retribution for bringing such challenges.

(d) Until the challenge is resolved, authorized holders should continue to safeguard and disseminate the challenged CUI at the control level indicated in the markings.

(e) If a challenging party disagrees with the response to a challenge, that party may use the Dispute Resolution procedures described in § 2002.52.

### § 2002.52 Dispute resolution for agencies.

(a) When laws, regulations, or Government-wide policies governing the CUI involved in a dispute set out specific procedures, processes, and requirements for resolving disputes, agencies must follow those processes for that CUI. This includes submitting the dispute to someone other than the CUI EA for resolution if the authority so requires. If the CUI at issue is involved in litigation, the agency should refer the issue to the appropriate attorneys for resolution through the litigation process.

(b) When laws, regulations, and Government-wide policies governing the CUI do not set out specific procedures, processes, or requirements for CUI dispute resolution (or the information is not involved in litigation), this part governs.

(c) All parties to a dispute arising from implementing or interpreting the Order, this part, or the CUI Registry should make every effort to resolve the dispute expeditiously. Parties should address disputes within a reasonable, mutually acceptable time period, taking into consideration the parties' mission, sharing, and protection requirements.

(d) If parties to a dispute cannot reach a mutually acceptable resolution, either party may refer the matter to the CUI EA.

(e) The CUI EA acts as the impartial arbiter of the dispute and has the authority to render a decision on the dispute after consulting with all affected parties. If a party to the dispute is also a member of the Intelligence Community, the CUI EA must consult with the Office of the Director of National Intelligence when the CUI EA receives the dispute for resolution.

(f) Until the dispute is resolved, authorized holders should continue to safeguard and disseminate any disputed CUI at the control level indicated in the markings, or as directed by the CUI EA if the information is unmarked.

(g) Parties may appeal the CUI EA's decision through the Director of OMB to the President for resolution, pursuant to section 4(e) of the Order. If one of the parties to the dispute is the CUI EA and the parties cannot resolve the dispute under paragraph (c) of this section, the parties may likewise refer the matter to OMB for resolution.

### § 2002.54 Misuse of CUI.

(a) The CUI SAO must establish agency processes and criteria for reporting and investigating misuse of CUI.

(b) The CUI EA reports findings on any incident involving misuse of CUI to the offending agency's CUI SAO or CUI Program manager for action, as appropriate.

### § 2002.56 Sanctions for misuse of CUI.

(a) To the extent that agency heads are otherwise authorized to take administrative action against agency personnel who misuse CUI, agency CUI policy governing misuse should reflect that authority.

(b) Where laws, regulations, or Government-wide policies governing certain categories or subcategories of CUI specifically establish sanctions, agencies must adhere to such sanctions.

## Appendix A to Part 2002—Acronyms

CNSI—Classified National Security Information
Council or the Council—The CUI Advisory Council
CUI—Controlled unclassified information
EA—The CUI Executive Agent (which is ISOO)
FOIA—Freedom of Information Act
FRD—Formerly Restricted Data
ISOO—Information Security Oversight Office at the National Archives and Records Administration
NARA—National Archives and Records Administration
OMB—Office of Management and Budget within the Office of Information and Regulatory Affairs of the Executive Office of the President
PM—the agency's CUI program manager
RD—Restricted Data
SAO—the senior agency official [for CUI]
TR—Transfer Request in NARA's Electronic Records Archives (ERA)

Dated: August 30, 2016.

**David S. Ferriero,**

*Archivist of the United States.*

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## Part V

## The President

Proclamation 9487—National Hispanic-Serving Institutions Week, 2016
Proclamation 9488—National Days of Prayer and Remembrance, 2016
Proclamation 9489—World Suicide Prevention Day, 2016
Proclamation 9490—National Grandparents Day, 2016
Proclamation 9491—Patriot Day and National Day of Service and Remembrance, 2016

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 9487 of September 9, 2016**

## National Hispanic-Serving Institutions Week, 2016

**By the President of the United States of America**

**A Proclamation**

Ensuring opportunity is within reach for everyone requires us to provide all our people with access to a world-class education. Higher education gives people a sense of who they are and sharpens how they see the world, and in our 21st-century economy, it is an investment that pays off—helping Americans work their way into the middle class. Across our country, Hispanic-Serving Institutions (HSIs) have helped Hispanic students—many of whom are the first in their family to go to college—earn a college degree. This week, we reflect on how these important institutions have helped Hispanic students reach for their dreams, and we reaffirm our commitment to supporting them for generations to come.

HSIs have given more Hispanics access to the resources and opportunities they need to compete in our economy. More than half of America's Hispanic undergraduates attend HSIs, which have played a critical role in increasing access to a college education and have worked to bolster enrollment, retention, and graduation rates. In the last several years, college enrollment among Hispanics hit a record high, and today, it continues to grow. Over the past two decades, the percentage of young Hispanics who have earned a college degree has increased significantly—but in that same time, disparities have persisted. HSIs are helping ensure more Hispanics have the opportunity to complete college, moving us closer to our goal of leading the world in higher education by 2020.

Hispanics are the largest and fastest growing minority group in America, and we must keep striving to ensure they can pursue an exceptional education. My Administration has sought to improve educational outcomes and opportunities for every American, including Hispanics through the White House Initiative on Educational Excellence for Hispanics. We have helped strengthen HSIs, which serve a higher proportion of low-income students than other institutions of higher education, by investing more than $1 billion in them over 10 years. Because college has never been more expensive, I have also taken steps to make it easier for more Americans to pay for higher education—steps that include expanding Pell Grants and offering tuition tax credits. And I am fighting for 2 years of free community college for any student willing to work for it, because no American should be priced out of a quality education.

The contributions of Hispanics have shaped our national narrative, and it is crucial to our success that we empower more Hispanics and young people across our country to thrive. For generations, HSIs have helped Hispanics earn college degrees, seek meaningful careers, and aspire to be anything they want. At the heart of our Nation is the idea that no matter where you come from or what you look like, if you are willing to work hard, you can make it in America. By expanding opportunities for all, we can bring more people closer to reaching their piece of the American dream.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 12 through

September 18, 2016, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

[FR Doc. 2016–22288
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# Presidential Documents

**Proclamation 9488 of September 9, 2016**

## National Days of Prayer and Remembrance, 2016

**By the President of the United States of America**

**A Proclamation**

On September 11, 2001, a group of small and hateful minds conspired to threaten the very fiber of our country, seeking to break the American spirit and destroy our way of life. From the Atlantic to the Pacific, Americans were struck with grief as devastation and senseless loss of innocent human life unfolded. In the empty shadow of the World Trade Center, the remains of the Pentagon, and a charred Pennsylvania field where courageous passengers saved countless lives, what emerged from the ashes of that day was not defeat—it was the heroism, compassion, and unity of the American people, which no act of terror or hate could ever take away. On September 11, we recall the true spirit of our Nation following these heinous attacks, and we resolve to enshrine the enduring compassion and love of our people forever in the heart of America.

Fifteen years later, we pay tribute to the loss of nearly 3,000 lives, reflect on treasured memories of those we lost, and resolve to never forget that day, even as we look toward a brighter and more hopeful future. We draw inspiration from the survivors who still bear the scars—both seen and unseen—of that tragic day. We honor the valiance of our Nation's first responders, whose instinct was not to turn back to find safety for themselves, but to run toward untold danger. We show our gratitude to those young Americans of the 9/11 Generation, who until that day lived knowing only peace, but who have answered our country's call to serve under our flag to meet the threats of our time with bravery and distinction.

In the years that have followed, with prayer and reflection, grace and faith, Americans have grieved together, held each other close, and looked out for one another. Though the void felt by those who lost a loved one on that day can never be filled, we can continue to heal the wounds inflicted by hatred by honoring the notion that, no matter our differences, we are forever united as one American family.

As we mourn on this most solemn anniversary, let us also reflect on the freedom and tolerance that define this great Nation, and let us reaffirm our commitment to preserving those fundamental values for each generation of Americans to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, September 9 through Sunday, September 11, 2016, as National Days of Prayer and Remembrance. I ask that the people of the United States honor and remember the victims of September 11, 2001, and their loved ones through prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, evening candlelight remembrance vigils, and other appropriate ceremonies and activities. I invite people around the world to participate in this commemoration.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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# Presidential Documents

**Proclamation 9489 of September 9, 2016**

## World Suicide Prevention Day, 2016

**By the President of the United States of America**

**A Proclamation**

Every year, too many people are taken from us by suicide. These tragedies tear at families and communities, leaving behind heartbroken loved ones who suffer immeasurably. World Suicide Prevention Day is a time to join with neighbors across the globe to reaffirm our commitment to preventing suicide. Here at home—thanks to dedicated crisis counselors on hotlines and in schools; clinicians and other health professionals in hospitals and mental health centers; faith leaders, teachers, friends, and family members who never give up on trying to make a meaningful difference—lives have been saved. Together, we can get people critical help when they are in crisis and raise awareness of the importance of preventing suicide in every community.

It is critical that we recognize the connections that mental health conditions and substance use disorders have to suicide, as well as how other external factors, including harassment, bullying, and discrimination, can play a role. Suicide can touch any of us—regardless of age, gender, or race—and leave a lasting mark on communities. We must strive to build safe and supportive environments and eliminate the stigma surrounding mental health issues that too often prevents people from seeking the care they need.

No one should feel alone when facing these challenges—there is always hope, and always a helping hand. My Administration has served as a partner in this important effort through the National Action Alliance for Suicide Prevention—a public-private partnership through which the Federal Government has helped champion suicide prevention. All Americans can make a difference in this effort. Reach out to a friend, let them know you are there in moments of need, and encourage others to seek assistance—because empowering others to find the strength to ask for help and lifting up those who feel alone can save lives. The National Suicide Prevention Lifeline provides immediate assistance for all Americans at 1–800–273–TALK, and I encourage you to call if you or someone you know is in need of help. Veterans, service members, and their loved ones can also call this number to reach the Veterans Crisis Line, and they can also send a text message to 838255.

The Affordable Care Act provides the largest expansion of mental health coverage in a generation, and it has helped increase access to quality, affordable health insurance for all Americans. The Act prohibits insurers from discriminating against people based on pre-existing conditions like depression, expands mental health and substance use disorder parity policies to more than 60 million Americans, and requires that Health Insurance Marketplace plans cover mental health and substance use disorder services. Additionally, my Administration proposed a new $500 million investment to increase access to mental health care. And because more than 20,000 Americans each year take their own lives with a firearm, we must do all we can to ensure people who need help get it and improve gun safety technology that can help prevent suicides.

We also have to end the tragedy of suicide among our troops and our veterans. These American heroes give of themselves for our country, and they deserve the best from us in return—so long as any veteran is suffering or feels like they have nowhere to turn, we have more work to do. In 2014, I announced 19 Executive actions to improve mental health care for our veterans, members of our Armed Forces, and their loved ones. And last year, to build on these efforts, I signed the Clay Hunt Suicide Prevention for American Veterans Act to improve how we serve veterans with post-traumatic stress and other illnesses. By increasing peer support and outreach to service members transitioning to civilian life, this Act makes it easier for veterans to find the care they need when they need it.

The theme of this year's World Suicide Prevention Day is "Connect. Communicate. Care." These words provide a roadmap to reaching our universal goal of suicide prevention—encouraging all people to reach out to those who are suffering in silence, express when they are in need of help, and lift up those around them. On this day, we are reminded that help is available and that a brighter future lies ahead. Let us honor the souls we have lost too soon and vow to do everything in our power to prevent suicide.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 10, 2016, as World Suicide Prevention Day. I call upon citizens, government agencies, organizations, health care providers, and research institutions to raise awareness of the mental health resources and support services available in their communities and encourage all those in need to seek the care and treatment necessary for a long and healthy life.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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# Presidential Documents

**Proclamation 9490 of September 9, 2016**

## National Grandparents Day, 2016

**By the President of the United States of America**

**A Proclamation**

Every day, families and communities across the globe benefit from the too often unheralded wisdom and devotion of dedicated grandparents—women and men who blazed trails, broke down barriers, and shaped the world we know today. On National Grandparents Day, we honor America's grandparents as the backbone of our communities, and acknowledge the progress they forged so that their children and grandchildren could live out their dreams.

In our grandmothers and grandfathers, we see a reflection of what is possible with hard work, grit, and determination. Their fight for inclusivity and opportunity for all can be seen in board rooms and courthouses across our country, and their efforts helped build the world's largest, most durable economy and strongest middle class. This enduring legacy spans generations and will empower innovators and leaders for years to come.

Some grandparents sacrificed everything, leaving behind all they knew and loved to fight for freedom far from home, or to start a new life and give their families a chance at a brighter tomorrow in America. Millions of grandparents serve as primary caregivers, providing the discipline, guidance, and encouragement needed to thrive. And for so many Americans, our grandparents are our heroes, our confidantes, and our fiercest advocates. As connections to our past and inspirations for our future, grandparents made us who we are today and have paved a path we can aspire to follow.

Today, we pause to reflect not only on the myriad ways our grandparents have enriched our lives with their selfless acts of compassion and kindness, but also on our responsibility to ensure they can retire as they deserve—with security and dignity. Let us recognize their lasting contributions to their families and communities, and let us express our gratitude for all they have made possible.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 11, 2016, as National Grandparents Day. I call upon all Americans to take the time to honor their own grandparents and those in their community.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

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# Presidential Documents

**Proclamation 9491 of September 9, 2016**

## Patriot Day and National Day of Service and Remembrance, 2016

**By the President of the United States of America**

**A Proclamation**

Fifteen years ago, nearly 3,000 innocent lives—men, women, and children who had been going about their normal routines—were taken from us, depriving families and loved ones of a lifetime of precious moments. But the acts of terror of September 11, 2001, sought to do more than hurt our people and bring down buildings: They sought to break our spirit and destroy the enduring values that unite us as Americans. In the years that followed, our capacity to love and to hope has guided us forward as we worked to rebuild, more sound and resilient than ever before. With the hearts of those we lost held faithfully in our memories, we reaffirm the unwavering optimism and everlasting strength that brought us together in our darkest hour, and we resolve to give of ourselves in service to others in that same spirit.

The pain inflicted on our Nation on September 11 was felt by people of every race, background, and faith. Though many young Americans have grown up without knowing firsthand the horrors of that day, their lives have been shaped by it. They hear of the many acts of service that occurred—coworkers who led others to safety, passengers who stormed a cockpit, and first responders who charged directly into the fire. Many Americans did everything they could to help survivors, from volunteering their time to donating food, clothing, and blood. And many signed up to don our Nation's uniform to prove to the world that no act of terror could eclipse the strength or character of our country.

United by a common creed, a commitment to lifting up our neighbors, and a belief that we are stronger when we stand by one another, we must find the courage to carry forward the legacy of those who stepped up in our time of need. By devoting ourselves to each other and recognizing that we are a part of something bigger than ourselves—just as heroic patriots did on September 11—we are paying tribute to their sacrifices. On this National Day of Service and Remembrance, we must ensure that darkness is no match for the light we shine by engaging in acts of service and charity. I invite all Americans to observe this day with compassionate and selfless deeds that embody the values that define our people, and to visit www.Serve.gov to find opportunities to give back to their communities.

America endures in the tenacity of our survivors, and in the dedication of those who keep us safe. Today, we honor all who lost their lives in the heartbreaking attacks of September 11, and all who made the ultimate sacrifice for our country in the years that followed. In memory of these beautiful souls, we vow to keep moving forward. Let us have confidence in the values that make us American, the liberties that make us a beacon to the world, and the unity we sustain every year on this anniversary. Above all, let us stand as strong as ever before and recognize that together, there is nothing we cannot overcome.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as "Patriot Day," and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized "National Day of Service and Remembrance."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 11, 2016, as Patriot Day and National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and its Territories and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. Eastern Daylight Time to honor the innocent victims who perished as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and forty-first.

# Reader Aids

**Federal Register**

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## CUSTOMER SERVICE AND INFORMATION

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